



**Memorandum of Understanding  
Between the Department of the Interior U.S. Minerals Management Service  
and the Department of the Interior U.S. Fish and Wildlife Service  
Regarding Implementation of Executive Order 13186,  
“Responsibilities of Federal Agencies to Protect Migratory Birds”**

This Memorandum of Understanding (MOU) is entered into, by, and between the U.S. Minerals Management Service (MMS) and the U.S. Fish and Wildlife Service (FWS), herein collectively referred to as the Parties.

**A. Purpose**

This MOU meets the requirements under section 3 of Executive Order 13186 (66 FR 3853, January 17, 2001) concerning the responsibilities of Federal agencies to protect migratory birds (Attachment). The Executive Order directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act (MBTA). The purpose of this MOU is to strengthen migratory bird conservation through enhanced collaboration between the MMS and the FWS. This MOU does not waive legal requirements under the MBTA or any other statutes and does not authorize the take of migratory birds. This MOU identifies specific areas in which cooperation between the Parties will substantially contribute to the conservation and management of migratory birds and their habitats.

**B. Authority**

This MOU is entered under the provisions of the following laws and other authorities available to the Parties:

Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq)  
Bald Eagle Protection Act (Bald and Golden Eagle Protection Act), as amended (16 U.S.C. 668 et seq)  
National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq)  
Endangered Species Act, as amended (16 U.S.C. 1531 et seq)  
Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq)  
Coastal Zone Management Act, as amended (16 U.S.C. 1451 et seq)  
Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. 1251 et seq)  
Oil Pollution Act, as amended (33 U.S.C. 2701 et seq; 26 U.S.C. 9509)  
Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, 2001 (66 FR 3853) (Attachment)  
Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901-2911)  
Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742 et seq.)  
Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715r)

## **C. Missions of Both Parties**

### **MMS**

MMS's mission is to manage the ocean energy and mineral resources on the Outer Continental Shelf and Federal and Indian mineral revenues to enhance public and trust benefits, promote responsible use, and realize fair value. This includes the issuance of leases, easements and rights-of-way for activities that develop renewable energy and oil, gas, and other mineral resources on the Nation's Outer Continental Shelf (OCS) in an environmentally sound and safe manner. This mission reflects the broader goals of the Department of the Interior, as well as the legislative mandates followed by the MMS. The MMS recognizes the following as important to achieving its objectives: (1) science-based environmental assessment, monitoring, and mitigation, (2) responsiveness to stakeholders, and (3) a commitment to proper stewardship and use of energy and mineral resources for all Americans.

The MMS plays a key role in America's energy supply by regulating the development and production of renewable energy oil, gas, and other mineral resources on 1.7 billion acres of the OCS. The MMS is also responsible for regulating OCS non-energy minerals, including sand and gravel extraction. In addition to responsibility for the administration of renewable energy development on the OCS, the Energy Policy Act of 2005 also gave the MMS authority over alternative uses of existing OCS facilities to the extent not covered by other Federal laws. The MMS regulation of these development activities includes provisions to ensure safety and the protection of the coastal, marine, cultural, and human environments.

Commitment to environmental protection and safe operations begins with the first step in the leasing process and continues through the decommissioning of facilities. The MMS complies with all relevant legislation, using the framework process of the National Environmental Policy Act (NEPA) to assess the potential environmental risks of offshore regulated activities, and to develop mitigation measures to avoid or minimize adverse impacts.

### **FWS**

The mission of the FWS is to work with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The FWS Division of Migratory Bird Management serves as a focal point in the United States for policy development and strategic planning, program implementation, and evaluation of actions designed to conserve migratory birds and their habitats.

The FWS is legally mandated to implement the conservation provisions of the MBTA, which includes responsibilities for managing migratory bird populations, domestic and international coordination, and the development and enforcement of regulations. The Migratory Bird Conservation Act and the Fish and Wildlife Coordination Act mandate migratory bird habitat conservation including habitat protection through acquisition, enhancement, and/or management, and avoidance and minimization of impacts.

FWS programs that involve bird conservation activities include:

1. The Division of Migratory Bird Management and the Migratory Bird Programs in the FWS Regional Offices serve as focal points for policy development and strategic planning. These offices develop and implement monitoring and management initiatives that help maintain healthy populations of migratory birds and their habitats; and provide continued opportunities for citizens to enjoy bird-related recreation.
2. The Division of Bird Habitat Conservation is instrumental in supporting habitat conservation partnerships through the administration of bird conservation grant programs and development of Joint Ventures that serve as major vehicles for implementing the various bird conservation plans across the country.
3. Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews of projects regulated by MMS involving migratory bird issues. The Field Offices coordinate with the Regional Migratory Bird Offices, as necessary, during these reviews regarding permits and overall migratory bird conservation for MMS activities.
4. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, Endangered Species Act (ESA), and other laws pertaining to migratory bird conservation.
5. The Division of Refuges and Wildlife manages National Wildlife Refuges (NWRs) across the country, many of which were established to protect and conserve migratory birds. NWRs not only protect important habitat, but also focus on native habitat restoration for the benefit of migratory birds.

#### **D. Statement of Mutual Interest and Benefit**

Both Parties have interests and responsibilities to ensure that the Nation's development of energy and non-energy mineral resources on the OCS is done in a manner protective of the natural environment. The Parties agree that migratory birds are important components of biological diversity and that their conservation and management will help to sustain ecological integrity and serve the public demand for outdoor recreation, conservation education, wildlife viewing, and hunting opportunities.

In assessing impacts to and protecting biological resources, the MMS consults with the FWS on activities that may affect threatened and endangered species. The MMS also evaluates the effects on migratory birds and important habitats such as offshore and nearshore foraging, staging, molting, and roosting habitats. The MMS regularly conducts studies that provide information for protection and conservation of migratory birds, including protected species.

It is in the interests of both Parties that potential impacts be thoroughly assessed and that mitigation measures be considered and implemented as appropriate. The MMS uses the NEPA process to evaluate potential impacts of proposed actions and alternatives, including impacts to

migratory birds and their habitats. The potential impacts on migratory birds associated with offshore development may include direct effects such as the possibility of attraction to and collision with structures. For example, large numbers of migratory birds have been observed to be attracted to offshore structures and should be evaluated due to potential for collision. Indirect effects may include potential habitat loss through displacement or disturbance. Accidents, such as oil spills, can have short-term, acute and long-term, chronic effects on migratory birds and their habitats.

## **E. Obligations of Both Parties**

To the extent allowed by law, subject to the availability of appropriations and within administration budgetary limits, and in harmony with the MMS and FWS missions and capabilities, both Parties shall:

1. Protect, restore, and enhance habitat of migratory birds to the extent practicable during the MMS's management of resource development and extraction. This includes:
  - a. Collaborating on developing and implementing management practices that minimize or avoid negative impacts on migratory bird populations and/or their migration, nesting, foraging, staging, or wintering habitats.
  - b. Working collaboratively with other Federal and State agencies and other partners in their efforts to identify, protect, restore, enhance, monitor, and manage important migratory bird areas potentially affected by agency actions, focusing efforts in areas of current or projected project activities. This includes recognizing Marine Protected Area and Marine Important Bird Area designations.
  - c. Preventing or abating pollution detrimental to migratory birds and their habitats.
  - d. Preventing or abating detrimental alteration of migratory bird habitats.
2. Promote research and information exchange related to migratory bird conservation including inventorying and monitoring, studies related to agency decisions and management practices that may impact migratory birds, and information on environmental contaminants and other physical and biological stressors that are relevant to the conservation of migratory birds. The Parties agree to:
  - a. As practicable and compatible with other study needs and program mandates, collaborate on warranted studies: (1) on migratory bird species that may be potentially affected by agency actions; (2) on the effects of management activities; (3) on avoiding degradation of migratory bird habitat; and (4) on developing a framework for appropriate mitigation measures to offset offshore mortality episodes. Examples include:
    - i. Develop protocol for research focused on developing better methods of evaluating impacts of agency actions, particularly associated with renewable energy, to migratory birds;

- ii. Develop protocol for research focused on developing criteria in site selection of facilities, particularly associated with renewable energy; and
    - iii. Monitor avian mortality and/or avoidance behavior at offshore facilities.
  - b. Sharing inventory, monitoring, research, and study data in a timely fashion with other Federal and State agencies as appropriate and practicable. Data will be archived with national or regional repositories, when appropriate. These repositories may include the Natural Resources Monitoring Partnership (NRMP), Computerized Database Analysis System (CDAS) and could be made available through information sharing networks such as National Biological Information Infrastructure (NBII) and/or the Avian Knowledge Network (AKN).
  - c. Promoting training opportunities in the most appropriate methods and techniques to: 1) inventory and monitor migratory birds; 2) assess population status of migratory birds; 3) assess temporal and spatial bird use in specific areas; 4) evaluate impacts of projects on migratory birds; and 5) develop management practices that avoid or minimize adverse impacts and promote beneficial proactive approaches to migratory bird conservation.
  - d. Identifying best practices for: 1) avoiding and minimizing take of migratory birds; 2) conserving and restoring migratory bird habitats; 3) monitoring demographic parameters of migratory birds; 4) standardizing collection techniques of migratory bird data to allow cross-study comparison; and 5) promoting bird conservation.
  - e. Developing partnerships to further migratory bird conservation, as practicable. This includes cooperation, coordination, and data sharing with other Federal or State agencies, universities, potential developers or their contractors, and nongovernmental organizations involved in monitoring and research studies to provide reliable and comparable information on the distribution and abundance or status and trends of migratory bird populations.
  - f. Contributing information on migratory bird resources to partners developing outreach and education materials and activities.
3. Periodically evaluate the measures described in this MOU intended to protect, restore, and enhance migratory birds and their habitats, including avoiding or minimizing adverse impacts to migratory birds. The FWS Division of Migratory Bird Management, Ecological Services, and Endangered Species Offices and the MMS Environmental Division agree to design and implement feasible and effective conservation measures.
4. Participate annually, or as needed, in the interagency Council for the Conservation of Migratory Birds to evaluate the implementation of this MOU. The Council's duties include:
- a. Sharing the latest resource information to assist in the conservation and management of migratory birds.

- b. Developing an annual report of accomplishments and recommendations related to Executive Order 13186.
- c. Fostering partnerships to further the goals of Executive Order 13186.
- d. Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

## **F. Obligations of the MMS**

To the extent allowed by law, subject to the availability of appropriations and within budgetary limits, and in harmony with the Department's and the MMS's missions and capabilities, the MMS shall:

1. Integrate migratory bird conservation principles, as well as reasonable and feasible conservation measures and management practices into MMS approvals, procedures and practices consistent with the Council on Environmental Quality's (CEQ) regulations, and Departmental and Bureau guidelines and procedures. Prior to issuing authorizations, the MMS will consult guidelines that exist at that time and consider conservation measures that are relevant, appropriate and feasible for proposed projects during siting, construction, and operations. Examples could include modifications to lighting on structures or periods of turbine operations. These measures would be designed to decrease the likelihood of bird collisions and would be consistent with such best management practices as exist at that time. Other measures could include conducting aerial surveys to determine areas of high bird concentrations during all seasons of the year and avoiding disturbance of nesting beaches during nesting season.
2. Avoid or minimize, to the extent practicable, negative impacts on migratory bird resources by proposed actions, in compliance with and/or supporting the intent of the MBTA, EO 13186, the Bald and Golden Eagle Protection Act, ("BGEPA"), the ESA, NEPA, and other applicable statutes.
3. Expand the current MMS practice of including migratory birds in the scope of environmental reviews, with emphasis on species of concern. This includes reviewing, identifying, and evaluating the effects of proposed actions on migratory birds, including potential take and degradation of habitat. Consider designing, implementing, and supporting studies to assist in MMS environmental reviews and in planning the MMS studies program, to the extent practicable.
  - a. Expand the current practice of evaluating reasonable alternatives in environmental reviews to avoid or minimize adverse effects to migratory birds or degradation of their habitats. This includes: 1) identifying information needs related to OCS renewable energy, oil, gas and other mineral development using the established planning and priority setting procedures established under the Environmental Studies Program. The MMS's Environmental Studies Program defines information needs and implements studies where feasible, designed to assess the effects of MMS-approved OCS activities

- on the human, marine, and coastal environments within MMS jurisdiction; 2) implementing studies to develop practices to avoid or minimize impacts to migratory birds; and 3) implementing studies to determine how to improve evaluation of impacts;
- b. Assess and estimate the effects of proposed actions on migratory birds and their habitats, through the project planning process, including the NEPA. Use best available demographic, population, and habitat data in the assessment of effects upon migratory birds. If sufficient data are unavailable, acquire necessary data by working with Federal, State, and other partners (e.g., work with FWS to conduct offshore bird surveys);
  - c. Engage in early planning and scoping with the FWS to proactively address migratory bird conservation, and initiate appropriate actions to avoid or minimize impacts to migratory birds as a result of a proposed action. When developing the list of species to be considered in the planning process, it should be noted that current lists of species of concern are not necessarily inclusive nor accurate for many offshore birds because of the lack of information on their populations, distribution, and trends;
  - d. Inventory and monitor migratory birds and their habitat within the agency's capabilities and authorities to better understand the need for, and effectiveness of, conservation efforts tied to projects under the MMS authority;
  - e. Maintain and enhance efforts to prevent or abate the pollution and degradation of migratory bird habitats directly or indirectly resulting from MMS-regulated activities by including appropriate stipulations to leases, conditions on approvals, and compliance monitoring.
4. Incorporate migratory bird habitat and population management objectives and recommendations into planning processes and guidance, as appropriate. This includes objectives and priorities from national and regional bird conservation plans including Partners in Flight, North American Waterfowl Management Plan, U.S. Shorebird Conservation Plan, and the North American Waterbird Conservation Plan.
  5. Identify, in coordination with the FWS, MMS-issued OCS leases and other areas for support facilities that have the potential to adversely affect migratory bird populations (range-wide or important regional/local populations), including breeding, migration, or wintering habitats. The MMS shall develop and implement, in cooperation with the FWS, reasonable and feasible conservation measures that would avoid or minimize adverse impacts to migratory birds or enhance the quality of habitat used by migratory birds.
    - a. With respect to those actions so identified to potentially have adverse effects on migratory bird populations (as described above), the MMS shall provide for sequential mitigation, as defined by 40 C.F.R. § 1508.20 and in accordance with Service Mitigation Policy (46 FR 7644). This may include an applicant or lessee establishing funds or other off-site mitigation for conservation to compensate adverse impacts to migratory birds through habitat restoration or enhancement. However, the appropriateness and

practicality of implementing any specific conservation measure will be determined on a case-by-case basis.

- b. The effectiveness of measures considered necessary to minimize impacts to migratory birds will be monitored and reviewed on a regular basis. The MMS will incorporate new information regarding their efficacy and consider the need for modifications or additions to the measures. The MMS will seek the cooperation of the FWS in evaluating their effectiveness.
6. Advise other parties, contractors and cooperating agencies funded by the MMS to consult with the applicable FWS Regional Migratory Bird Offices to determine whether permits for the take of migratory birds pursuant to requirements of 50 CFR §§ 10, 13, 21, and 22 are necessary. In situations where a permit is not available, these parties should seek concurrence from the FWS that the proposed conservation measures adequately address the goals of migratory bird conservation as described in F.1, above.
7. Support efforts by the FWS to promote the ecological, economic, and recreational values of migratory birds by supporting outreach and educational activities and materials, as appropriate.
8. Incorporate data, analyses, results, and management implications of migratory bird inventory, monitoring and research studies conducted by FWS into MMS environmental reviews of proposed activities, as appropriate.
9. Address, as appropriate, the potential introduction, establishment and spread of non-native plants and animals as a result of resource development and energy production in the OCS.
10. Advise the public of this MOU through a notice published in the Federal Register and distribute the MOU within the MMS.

#### **G. Obligations of the FWS**

The following activities will be coordinated through the appropriate FWS Migratory Bird Program, Ecological Services, and Endangered Species offices (i.e., national for national projects, regional for regional projects, and both regional and State offices for local projects.)

To the extent permitted by law and subject to the availability of appropriations and budgetary limits, and to the extent that the following obligations are in harmony with agency missions and capabilities, the FWS shall:

1. When requested, and as information is available, assist in identifying important migratory bird areas and habitats (e.g., migration corridors and staging, wintering, nesting, brood-rearing, and foraging habitats on or adjoining the OCS) that the MMS should evaluate in its environmental reviews. Where data are lacking or insufficient, the FWS may assist the MMS in designing appropriate studies.

2. Keep the MMS informed of any bird conservation updates or changes in policy that might affect MMS-regulated activities on the OCS, by providing information on:
  - a. Changes to the MBTA and its regulations and procedures or other acts and their regulations affecting management of migratory birds.
  - b. Population trends of species that might be affected by activities on the OCS.
  - c. Changes to the lists of Species of Concern (published in Birds of Conservation Concern) or threatened and endangered species, or the birds covered under the MBTA.
  - d. Changes in, updates to, or additions to national and regional bird conservation plans (e.g., Partners in Flight Bird Conservation Plan, United States Shorebird Conservation Plan, North American Waterbird Conservation Plan, or the North American Waterfowl Management Plan).
  - e. Protection measures for reducing human-caused bird mortality that may be applicable to MMS-regulated activities, as new information becomes available.
  - f. Advances in identifying and understanding offshore movements of migratory birds.
3. Upon request, make available to the MMS for incorporation into environmental analysis, reports, publications and any FWS data relevant to evaluating the potential impacts of MMS-regulated actions on migratory birds and their habitats, including information on migratory birds' population structure, abundance, distribution, status, contaminant levels, and habitat needs. If adequate data are not available, the FWS may help the MMS identify studies to evaluate the potential impacts of MMS-regulated actions on migratory birds and their habitats.
4. Inform appropriate MMS staff of meetings and workshops relevant to assessing migratory bird population structure, status, trends, habitat needs, distribution, and abundance in the OCS. Inform the MMS of planned or possible monitoring or assessment programs that may benefit both agencies and offer to work together to avoid duplication within the Department.
5. Conduct informational and educational programs oriented toward migratory bird conservation and, when requested, provide literature, or information for outreach programs of the MMS.
6. As early as practicable, review and provide comments on MMS NEPA documents and management actions on how to avoid, minimize or compensate for unavoidable adverse impacts resulting from activities associated with MMS leases to better ensure appropriate protection for migratory birds. In collaboration with MMS and other regulatory agencies, draft lease stipulations and conditions, conservation measures, notices and other regulatory or compliance requirements for lessees and operators to better clarify, describe, or interpret requirements associated with proposed actions to protect migratory birds.

## H. Definitions

**Action** - a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency.

**Birds of Conservation Concern** - published by the FWS Division of Migratory Bird Management, refers to the list of nongame birds, gamebirds without hunting seasons, subsistence-hunted nongame birds in Alaska; and ESA candidate, proposed endangered or threatened, and recently delisted species in the United States in its entirety, including island “territories” in the Pacific and Caribbean. The overall goal of this list is to identify the migratory and non-migratory bird species that represent the FWS’s highest conservation priorities. The most current version of the list, Birds of Conservation Concern 2008, is available at <http://www.fws.gov/migratorybirds/reports/BCC2008/BCC2008.pdf>.

**Migratory Bird** - an individual of any species protected by the MBTA. A list of migratory birds can be found in 50 CFR § 10.13 or <http://www.fws.gov/migratorybirds/intrnltr/mbta/mbtandx.html>.

**Mitigation** – For NEPA purposes, mitigation includes (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments (from 40 CFR, Section 1508.20, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act).

**North American Waterbird Conservation Plan (NAWCP)** - an international partnership of Federal, State, Provincial, and Tribal government agencies, non-governmental organizations, and private interests focusing on the conservation of waterbirds, including marshbirds and inland, coastal, and pelagic waterbirds (<http://www.waterbirdconservation.org>).

**North American Waterfowl Management Plan (NAWMP)** - an international partnership of Federal, State, and Provincials and Tribal government agencies, non-governmental organizations, and private interests focusing on restoring waterfowl populations through habitat restoration, protection, and enhancement (<http://birdhabitat.fws.gov/NAWMP/nawmphp.html>).

**National Environmental Policy Act (NEPA)** - the law that requires Federal agencies prepare a detailed analysis of the environmental impacts of their proposed action with alternatives and to include public involvement for major federal actions significantly affecting the quality of the human environment.

**Outer Continental Shelf (OCS)** - the submerged lands, subsoil, and seabed, lying between the States' seaward jurisdiction and the seaward extent of Federal jurisdiction. In most areas this is 3 nautical miles from shore (a little less than 3.5 statute miles) extending to 200 nautical miles. The exceptions are the Gulf coast of Florida where State jurisdiction is 3 marine leagues (9 nautical

miles) and the Texas and Louisiana coasts where the OCS boundaries were fixed respectively based on 3 marine leagues and 3 imperial nautical miles (which is just slightly more than a nautical mile).

**Partners in Flight (PIF)** - a collaborative effort of more than 300 partners, including Federal and State government agencies, non-governmental organizations, conservation groups, foundations, universities, and industry, focusing on the conservation of land birds (<http://www.partnersinflight.org>).

**Species of Concern** - refers to those species listed in the periodic report, Birds of Conservation Concern, published by the FWS Division of Migratory Bird Management (<http://www.fws.gov/migratorybirds/reports/BCC2008/BCC2008.pdf>); priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, United States Shorebird Conservation Plan, Partners in Flight Bird Conservation Plans); species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and MBTA-listed gamebirds below desired condition (<http://www.fws.gov/migratorybirds/reports/status04/GBBDC%20LIST.pdf>).

**Take** – to pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to pursue, hunt, wound, kill, trap, capture or collect (50 CFR Section 10.12). The Executive Order further defines take to include intentional take, meaning take that is the purpose of the activity in question, and unintentional take, meaning take that results from, but is not the purpose of, the activity in question. Both intentional and unintentional take constitute take as defined by the regulation.

**United States Shorebird Conservation Plan (USSCP)** - an international effort undertaken by a partnership of Federal, State, and Provincial government agencies, non-governmental organizations, and private entities to promote stable and self-sustaining populations of all shorebird species. The plan provides a scientific framework to determine species, sites, and habitats that most urgently need conservation action (<http://www.fws.gov/shorebirdplan>).

## **I. Dispute Resolution**

Prevention of potential conflicts or resolutions of actual disagreements between the agencies will be attempted first at staff levels and elevated through the respective organizational levels if necessary. Conflict prevention or traditional Alternative Dispute Resolution (ADR) processes will be used to achieve consensus. Collaborative processes, including informal meetings or negotiations, will be used to avoid or minimize a dispute. If the dispute already has developed, more traditional processes may be appropriate, such as mediation or a negotiation assisted by a neutral third party. Notification of potential conflict or a dispute by either agency must be put in writing and attempts to resolve the matter at the Field level should occur within 30 days. If there is no resolution at this level within 30 days, either party may elevate the issue to the appropriate officials at Regional offices. In the event that there is no resolution at that level within 30 days, the dispute may be elevated by either Party to the Washington D.C. office of each agency.

Representatives of both agencies shall agree to enter into a conflict prevention process using collaborative methods or to enter into a traditional ADR process, as appropriate.

## **J. Agreement**

It is mutually agreed and understood that:

This MOU does not alter any Party's obligations or responsibilities under the authorities listed in Section B of this MOU or any other statute or other legal authority.

1. Either Party may terminate this MOU, in whole or in part, at any time by providing the other Party 30-days written notice to that effect.
2. Changes to this MOU shall be made in writing by mutual consent of both Parties, through an issuance of a written modification signed and dated by both Parties.
3. This MOU does not restrict either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
4. Documents furnished to a Party under this MOU may be subject to the Freedom of Information Act (FOIA, 5 U.S.C. § 552). A Party shall not release documents originating in the other Party to a FOIA requester. Rather, the Party shall forward such document(s) to the originating Party for review, determination, and response directly to the requester.
5. The MOU will not change or alter species conservation process and procedure requirements associated with the ESA or with agency-defined priority species. Each agency's responsibilities towards such species remain unchanged.
6. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or other transfer of anything of value between the Parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority.
7. Press releases prepared by either Party that reference this MOU, or the relationship established between the Parties of this MOU, shall have prior approval of both Parties.
8. The Parties shall schedule annual meetings at the headquarters level to review progress and identify opportunities for advancing the principles of this MOU.
9. This instrument in no way alters or takes the place of the respective Parties' requirements for conducting environmental analysis, including NEPA requirements.

10. This MOU does not require changes to current contracts, permits, or other third-party agreements. The MOU recognizes that the MMS may not be able to implement some elements of the MOU until such time as the MMS has successfully included them in formal planning processes.

11. This MOU is intended only to improve the internal management of the Executive Branch of the Federal Government and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

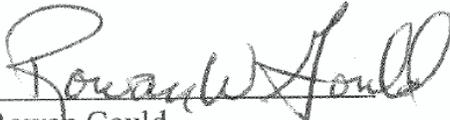
12. The principal contacts for this MOU are as follows:

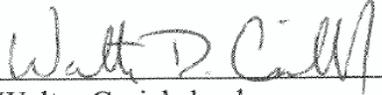
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**K. Effective Date**

This Memorandum of Understanding Between the Minerals Management Service and the United States Fish and Wildlife Service Regarding Implementation of Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" shall become effective as of the date the last Party duly executes it below. This MOU expires no later than five years from the effective date, at which time it is subject to review and renewal, or expiration.

  
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Rowan Gould  
Director  
U. S. Fish and Wildlife Service

  
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Walter Cruickshank  
Director  
Minerals Management Service

Date: 6/4/2009

Date: 6-4-09

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# Presidential Documents

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**Title 3—****Executive Order 13186 of January 10, 2001****The President****Responsibilities of Federal Agencies To Protect Migratory Birds**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (16 U.S.C. 703–711), the Bald and Golden Eagle Protection Acts (16 U.S.C. 668–668d), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and other pertinent statutes, it is hereby ordered as follows:

**Section 1. Policy.** Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936, the Convention for the Protection of Birds and Their Environment- Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978.

These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs executive departments and agencies to take certain actions to further implement the Act.

**Sec. 2. Definitions.** For purposes of this order:

(a) “Take” means take as defined in 50 C.F.R. 10.12, and includes both “intentional” and “unintentional” take.

(b) “Intentional take” means take that is the purpose of the activity in question.

(c) “Unintentional take” means take that results from, but is not the purpose of, the activity in question.

(d) “Migratory bird” means any bird listed in 50 C.F.R. 10.13.

(e) “Migratory bird resources” means migratory birds and the habitats upon which they depend.

(f) “Migratory bird convention” means, collectively, the bilateral conventions (with Great Britain/Canada, Mexico, Japan, and Russia) for the conservation of migratory bird resources.

(g) “Federal agency” means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(h) “Action” means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency will further define what the term “action” means with respect to its own authorities and what programs should be included

in the agency-specific Memoranda of Understanding required by this order. Actions delegated to or assumed by nonfederal entities, or carried out by nonfederal entities with Federal assistance, are not subject to this order. Such actions, however, continue to be subject to the Migratory Bird Treaty Act.

(i) "Species of concern" refers to those species listed in the periodic report "Migratory Nongame Birds of Management Concern in the United States," priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11.

**Sec. 3. Federal Agency Responsibilities.** (a) Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.

(b) In coordination with affected Federal agencies, the Service shall develop a schedule for completion of the MOUs within 180 days of the date of this order. The schedule shall give priority to completing the MOUs with agencies having the most substantive impacts on migratory birds.

(c) Each MOU shall establish protocols for implementation of the MOU and for reporting accomplishments. These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency's formal planning processes (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate. This order and the MOUs to be developed by the agencies are intended to be implemented when new actions or renewal of contracts, permits, delegations, or other third party agreements are initiated as well as during the initiation of new, or revisions to, land management plans.

(d) Each MOU shall include an elevation process to resolve any dispute between the signatory agencies regarding a particular practice or activity.

(e) Pursuant to its MOU, each agency shall, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

(2) restore and enhance the habitat of migratory birds, as practicable;

(3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;

(4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;

(5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural

Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;

(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;

(7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;

(8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;

(9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;

(10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such data (e.g. the Cornell Laboratory of Ornithology);

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and

(15) develop partnerships with non-Federal entities to further bird conservation.

(f) Notwithstanding the requirement to finalize an MOU within 2 years, each agency is encouraged to immediately begin implementing the conservation measures set forth above in subparagraphs (1) through (15) of this section, as appropriate and practicable.

(g) Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.

**Sec. 4. Council for the Conservation of Migratory Birds.** (a) The Secretary of Interior shall establish an interagency Council for the Conservation of Migratory Birds (Council) to oversee the implementation of this order. The Council's duties shall include the following: (1) sharing the latest resource information to assist in the conservation and management of migratory birds; (2) developing an annual report of accomplishments and recommendations related to this order; (3) fostering partnerships to further the goals of this order; and (4) selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

(b) The Council shall include representation, at the bureau director/administrator level, from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Energy, Defense, and the Environmental Protection Agency and from such other agencies as appropriate.

**Sec. 5. Application and Judicial Review.** (a) This order and the MOU to be developed by the agencies do not require changes to current contracts, permits, or other third party agreements.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,  
January 10, 2001.