

MEMORANDUM OF UNDERSTANDING
between
UNITED STATES DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
and
UNITED STATES DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

This Memorandum of Understanding (MOU) is entered into by and between the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and the U.S. Department of the Interior, Fish and Wildlife Service (FWS), collectively referred to as the Parties.

I. Purpose and Scope

The purpose of this MOU, as required by the Executive Order (EO) 13186, 66 Federal Register 3853 (January 17, 2001), is to strengthen migratory bird conservation and further the purposes of the migratory bird conventions, the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–711(MBTA), the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d (BGEPA), the Fish and Wildlife Coordination Act 16 U.S.C. §§ 742a – 754j-2, the Endangered Species Act 16 U.S.C. §§ 1531-1544 (ESA), the National Environmental Policy Act 42 U.S.C. §§ 4321-4347 (NEPA), and other pertinent statutes. This MOU focuses on avoiding or minimizing adverse impacts on migratory birds and strengthening migratory bird conservation through enhanced collaboration between APHIS and FWS by identifying and enhancing areas of cooperation. This voluntary MOU does not waive legal requirements under the MBTA, BGEPA, ESA, or any other statutes and does not authorize the take of migratory birds.

II. Authorities

This MOU is entered under the provisions of the following laws, in addition to other authorities applicable to the Parties:

- Act of August 30, 1890 (21 U.S.C. § 101);
- Act of December 22, 1987 (7 U.S.C. § 426c);
- Act of March 2, 1931 (7 U.S.C. §§ 426-426b);
- Animal Health Protection Act (7 U.S.C. §§ 8301-8317);
- Animal Welfare Act (7 U.S.C. §§ 2131-2159);
- Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d);
- Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544);
- Executive Order 13112, Invasive Species, 1999 (64 FR 6183);
- Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, 2001 (66 FR 3853);
- Federal Land and Policy Management Act (43 U.S.C. §§ 1701-1782);
- Fish and Wildlife Act of 1956, amended (16 U.S.C. §§ 791a *et seq.*);
- Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. §§ 2901 *et seq.*);

- Fish and Wildlife Coordination Act of 1980, as amended (16 U.S.C. §§ 661 *et seq.*);
- Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. §§ 715 *et seq.*);
- Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-711);
- National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347);
- Plant Protection Act (7 U.S.C. §§ 7701-7772);
- Talmadge-Aiken Act (7 U.S.C. § 450).

III. Missions of Both Parties

USDA Animal and Plant Health Inspection Service

APHIS is a lead agency in responding to issues involving animal and plant health, conflicts with wildlife, and animal well-being. Together with customers and stakeholders, APHIS promotes the health of animal and plant resources to facilitate their movement in the global marketplace and to ensure abundant agricultural products and services for U.S. consumers.

APHIS will consider and evaluate the conservation of migratory bird populations when initiating any plant pest or animal management action. APHIS will consider the magnitude, geographic extent, duration, and frequency of program actions while minimizing possible negative impacts on migratory birds, as appropriate.

Many APHIS programs are involved in animal and plant health and may affect impact migratory birds, including:

- A. Animal Care promotes and enforces the Animal Welfare Act (AWA) to ensure the humane care and treatment of most warm-blooded animals used in research, the wholesale pet trade, and exhibition; provides guidance to States on emergency issues; and acts as a Federal resource on animal welfare issues. The recent addition of birds not bred for use in research to the umbrella of protection under the AWA also brings the need to consider migratory birds held in captivity for uses covered by the Act.
- B. Biotechnology Regulatory Services (BRS) regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered (GE) organisms that are or may be plant pests. BRS considers the effects on wildlife including ESA-listed species as well as migratory birds and their habitat prior to authorizing releases of regulated articles (organisms) into the environment and making determinations on petitions for non-regulated status.
- C. Policy and Program Development (PPD) provides support to APHIS, and its associated programs, in decision making and planning that is based on sound science and is consistent with the Agency's environmental stewardship goals, policies, and legal authorities.
- D. Plant Protection and Quarantine (PPQ) safeguards agriculture and natural resources from the risks associated with the entry, establishment, or spread of plant pests and diseases and noxious weeds. PPQ monitors for invasive agricultural pests, thereby

monitoring the current state of certain bird habitats and food resources. When a significant new threat to plants is discovered, PPQ takes action to control that threat. By minimizing the harm to agricultural resources, birds will benefit that use that same resource as habitat or food.

- E. Veterinary Services (VS) protects and improves the health, quality, and marketability of animals, animal products, and veterinary biologics in the United States. VS accomplishes its mission by preventing, controlling and/or eliminating animal diseases, in addition to monitoring and promoting animal health and productivity. VS positively affects migratory bird populations by mitigating risks associated with avian diseases by preventing, controlling, or eradicating any known outbreaks within domestic flocks.
- F. Wildlife Services (WS) helps people resolve wildlife damage to a wide variety of resources and to reduce threats to human health and safety. WS manages and controls invasive and depredating bird and mammal species, some of which may benefit migratory birds. WS also protects ESA-listed birds from mammalian and avian species that prey on them, when predation may limit population recovery. In accordance with WS policy, the program provides people with technical and informational assistance and conducts direct management activities, which may involve lethal or nonlethal methods. Preference is given to nonlethal methods when practical and effective.

Fish and Wildlife Service

As a Federal agency within the U.S. Department of the Interior, the mission of the FWS is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The FWS Migratory Bird Program 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 include responsibilities for managing migratory bird populations, domestic and international coordination, and the development and enforcement of regulations that govern the take of migratory birds. 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 adverse impacts.

FWS programs that involve bird conservation activities include:

- A. 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.

- B. 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.
- C. Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews involving the effects of Federal projects on migratory bird and their habitats. The Field Offices coordinate with the Regional Migratory Bird Offices, as necessary, during these reviews regarding permits and overall migratory bird conservation coordination for APHIS activities.
- D. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, BGEPA, ESA, and other laws pertaining to migratory bird conservation.
- E. The National Wildlife Refuge System manages National Wildlife Refuges (NWRs) and Waterfowl Production Areas across the country, many of which were established to protect and conserve migratory birds. Refuges not only protect important bird habitat, but also focus on monitoring migratory bird populations and restoring and maintaining native habitats.

IV. Statement of Mutual Interest and Benefit

The Parties agree that migratory birds are important components of biological diversity. Their conservation and management help sustain ecological integrity, insect control, and natural seed dispersal. Migratory bird conservation also meets the growing public demand for conservation education and outdoor recreation, such as wildlife viewing and hunting opportunities. Migratory birds are important economically, and activities focused on birds provide financial benefits to local communities and businesses. Further, the Parties mutually agree, in no particular order, that it is important to: 1) conserve migratory bird populations and their habitats; 2) recognize that actions taken to benefit some migratory bird populations may adversely affect other migratory bird populations; 3) recognize that actions that may provide long-term benefits to migratory bird populations may have short-term impacts on individual birds; 4) recognize that under specific circumstances, migratory bird species can cause damage to agriculture, property, endangered and threatened species, and other natural resources; 5) recognize that migratory birds can create a risk to agriculture and a public health and human safety risk via a multitude of factors including zoonotic diseases, the introduction of exotic ticks, mites, and insects, and the creation of hazardous situations at or near airports and airfields; 6) control invasive agricultural pests as they may impact migratory bird habitats and resources; 7) survey and monitor for diseases (e.g., Avian Influenza) to protect migratory birds; and 8) recognize that migratory birds maintained in captivity should be cared for under standards that maintain humane and healthful conditions. The Parties resolve that full collaboration is essential to reduce risks to migratory birds while responding to issues involving animal and plant health, conflicts with wildlife, and animal well-

being. The Parties recognize the importance of safeguarding American agriculture, other resources, and migratory birds, and working collaboratively when the missions of the Parties are in apparent conflict.

It is in the interest of both Parties that potential impacts to birds, both direct and indirect, are thoroughly assessed, and unavoidable impacts are appropriately mitigated (see "Mitigation" under **Definitions**).

V. Responsibilities of Both Parties

The Parties agree that, pursuant to this 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:

- A. Support the conservation intent of the Executive Order 13186, and the migratory bird conventions, to the extent possible and practicable, by: 1) integrating bird conservation principles, measures, and practices into agency actions and 2) avoiding or minimizing the take of migratory birds and adverse effects on their habitat.
- B. Understand that non-target migratory birds might incidentally be killed despite the implementation of all reasonable measures to minimize the likelihood of take during actions covered under depredation permits, depredation and control orders, and agricultural control and eradication activities.
- C. Promote the efficient transfer of information between the Parties through electronic data and reporting systems.
- D. Participate in the interagency Council for the Conservation of Migratory Birds to share information on the conservation of migratory birds. The duties of the Council include the following:
 - a. Sharing the latest resource information to assist in the conservation and management of migratory birds.
 - b. Fostering partnerships to further the goals of Executive Order 13186.
 - c. Reporting annually on the accomplishments and recommendations related to the Executive Order.
 - d. Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.
- E. Promote collaborative inventory, monitoring, assessment, management studies, research, and information exchange related to the conservation of migratory birds, and use the best available scientific information in the management of migratory birds, as mission priorities allow. These include, but are not limited to:
 - a. Collaborating on studies and research to understand the effects of agency actions on migratory birds and monitoring responses of bird populations to conservation measures once these measures are developed and implemented. One example of this is the coordination between WS and FWS on studies

- correlating impacts to birds of prey from anthropocentric perturbations (e.g., satellite monitoring of tagged Osprey at Langley Air Force Base, Virginia).
- b. Contributing inventory, monitoring, and research data for breeding, staging, roosting, migrating, and wintering populations and habitats to appropriate national database repositories, such as Breeding Bird Survey, Monitoring Avian Productivity and Survivorship, Avian Knowledge Network, the Natural Resource Monitoring Partnership, the Bird Point Count Database, eBird, and other databases as appropriate.
 - c. Contributing to the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation.
 - d. Collaborating on avian health and disease investigations to help: establish avian health baselines; identify existing and emerging avian health and disease risks; ensure disease preparedness and prevention; develop, guide, and implement appropriate and effective management actions for the conservation of migratory birds.
- F. Adhere to established policies and guidance and contact the other Party to discuss issues prior to developing new policies and regulations that might affect permitting requirements for both Parties (e.g., migratory bird depredation or long-term care, housing, and captive propagation of captive migratory birds).
- G. Convene periodic meetings at the national and regional levels to exchange information relating to permits, anticipated migratory bird depredation management needs, and pending AWA regulations affecting migratory birds, and to develop resolutions to problems that will assist each agency in carrying out their respective authorities and mandates.
- H. Conduct training within APHIS on migratory bird management and monitoring and assessment methods and the inventory of populations and their habitats. This includes:
- a. Participating in training on conservation measures that reduce or eliminate the likelihood of unintentional take of migratory birds.
 - b. Participating in training on the implementation of national protocols for assessing habitat conditions, migratory bird status and trends, and evaluating effects of agency actions on bird populations and natural habitats.
 - c. Participating in training about avian diseases, field investigation, appropriate sample collection and other field and laboratory techniques in disease surveillance and response to mortality events.

VI. Responsibilities of the USDA Animal and Plant Health Inspection Service

APHIS agrees that the commitments made in this MOU shall be implemented in each of its program areas where applicable to the extent permitted by law and in harmony with agency missions, and subject to the availability of appropriations. APHIS shall:

- A. Adhere to current APHIS guidance and avoid and minimize, to the extent practicable, detrimental migratory bird habitat alteration or reduction during management activities, in compliance with and/or supporting the intent of the MBTA, EO 13186, BGEPA, ESA, and other applicable statutes.
- B. Integrate migratory bird conservation principles, as well as reasonable and feasible conservation measures and management practices into APHIS policy and management actions/plans. APHIS will continue to include migratory birds in the scope of environmental reviews (under NEPA or other documentation), with emphasis on species of concern. This includes reviewing, identifying, and evaluating the effects of proposed actions on migratory birds, including developing measures to avoid or minimize the degradation of habitats.
- C. Implement the following approaches for avoiding and minimizing the likelihood of unintentional take, focusing first on species of concern, priority habitats, and key risk factors:
 - a. Evaluate a reasonable range of alternatives in environmental reviews to avoid and minimize adverse effects to migratory birds or degradation of habitats while still fulfilling the mission to protect American agriculture. Develop practices, in coordination with FWS, to avoid and minimize impacts to migratory birds and their habitat and 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 NEPA. Use best available demographic, population, behavioral, and habitat data in the assessment of effects upon migratory birds. If sufficient data are unavailable, attempt to acquire necessary data by working with Federal, State, and other partners.
 - c. Work collaboratively with FWS and other partners, and develop partnerships with non-federal entities, to monitor migratory birds, as resources allow and within the agency's capabilities and authorities, to improve and better understand the need for, and effectiveness of, conservation efforts tied to projects under the APHIS authority.
 - d. Adhere to APHIS' policy that a range of approaches and alternatives be considered before bird-damage control programs are selected. This includes giving consideration to the species responsible for the damage and the frequency, extent, and magnitude of the damage. In addition to damage confirmation and assessment, consideration will be given to the status of target and potential non-target species, local environmental conditions, relative costs of applying management techniques, environmental impacts, and social and legal concerns. This includes using non-lethal alternatives prior to implementing lethal control programs, when possible, and implementing measures to minimize impacts to non-target species.
 - e. Comply with regulation and permit conditions that identify the type of ammunition, firearm, and other methods available for use while conducting management activities. Compliance with regulations and permit conditions

that limit the use of lead ammunition during migratory bird take actions will reduce the amount of lead in migratory bird habitats.

- D. Comply with all applicable Federal migratory bird permitting requirements for activities subject to 50 CFR Parts 10, 13, 21, and 22. No permit is required to take migratory birds in accordance with depredation orders (50 CFR § 21.43, *et seq.*), or to scare or herd depredating birds (50 CFR § 21.41(a)), except for activities that include ESA listed species and eagles. No permit is required to destroy inactive nests (i.e., those without eggs or young) excluding nests of eagles or threatened and endangered species. In particular:
- a. APHIS will obtain, as appropriate, migratory bird depredation permits authorizing take necessary for wildlife damage management and identifying APHIS employees as the agents authorized to act under the permit authority. APHIS will develop guidance and procedures with FWS for minimizing such take (species and anticipated numbers) to resolve damage situations and develop procedures for review and evaluation of take actions.
 - b. Landowners or the management entity requiring assistance in resolving a migratory bird conflict will obtain specific depredation permits. Depredation permits issued to WS State Directors are generally used for short-term, unanticipated, and/or one time occurrences.
 - c. APHIS will comply with reporting requirements specified in migratory bird depredation permits, depredation orders, and control orders, as appropriate.
 - d. APHIS will coordinate application and renewals of permits with the appropriate FWS Regional Migratory Bird Permit Office.
 - e. APHIS will support efforts by FWS to minimize take authorized through depredation permits by recommending the appropriate number of birds on the APHIS WS Permit Review Form 37 to assist in alleviating damage caused by migratory birds, including implementation measures to avoid and minimize take of non-target species in association with depredation permits or depredation and control orders.
- E. Assist FWS in tracking and monitoring the take activities authorized under depredation permits, depredation orders, and control orders that require participants to obtain a completed APHIS WS Permit Review Form 37. To the extent practicable and given staffing and travel fund availability, Form 37 will be used by WS to provide FWS the basic information (as identified in regulatory language 50 CFR § 21.41 and WS Directive 2.301) required as part of the migratory bird depredation permitting process.
- F. Support efforts by FWS to promote the ecological, economic, and recreational values of migratory birds by supporting outreach and educational activities and materials, when appropriate.
- G. Minimize or prevent the pollution or detrimental alteration of the environment used by migratory birds whenever practicable by assessing information on environmental contaminants and other stressors relevant to migratory bird conservation.

- H. Contribute information, as appropriate and as resources allow, to FWS' efforts to study, research, and identify the habitat conditions needed to conserve migratory birds. APHIS will also contribute information, as appropriate and as resources allow, helping FWS evaluate the effects of management activities on habitats and populations of migratory birds.
- I. Coordinate with FWS during development of APHIS regulations regarding captive management of migratory birds for uses regulated under the AWA, such that affected entities receive clear instructions on migratory bird permitting and licensing requirements and the AWA inspection process. Efforts will be made to minimize temporal, fiscal, and paperwork burdens on all regulated entities.
- J. Advise the public of the availability of this MOU through a notice published in the Federal Register.
- K. Comply with the FWS National Bald Eagle Management Guidelines, as appropriate and as consistent with agency missions.

VII. Responsibilities of the Fish and Wildlife Service

FWS agrees that it will implement the commitments made in this MOU in each of its program areas where applicable to the extent permitted by law and in harmony with agency missions, and subject to the availability of appropriations. FWS shall:

- A. Inform APHIS of any bird conservation updates or changes in policy that affect agency actions. These include:
 - a. Revisions to the lists of Birds of Conservation Concern, threatened or endangered species or the birds covered under the MBTA.
 - b. Changes to the MBTA and other acts and associated regulations and procedures affecting management of migratory birds.
 - c. Changes in, updates to, or additions to national and regional bird conservation plans.
- B. Provide in a reasonable timeframe any available migratory bird population data that APHIS requests. Expand migratory bird population surveys and data collection, as appropriate and as resources allow, for species commonly involved in public health and safety and damage problems, especially, but not limited to, vultures, gulls, blackbirds, cormorants, and others, for inclusion in assessments and evaluations related to wildlife damage management decision-making by APHIS.
- C. Track migratory bird take authorized and reported under depredation permits and, where available, depredation orders. Assess the impacts of this take on migratory bird populations, including non-target species, when appropriate.

- D. Process migratory bird depredation permit applications in a timely manner to the extent practicable given NEPA timeline requirements and staffing availability.
- E. Develop and implement national guidelines to ensure the consistent and expeditious processing of migratory bird depredation permit applications to APHIS and others throughout the United States.
- F. Use the best scientific information available to evaluate the biological and human health and safety concerns of APHIS-recommended take under a migratory bird depredation permit application.
- G. If FWS has concerns about the appropriateness of a proposed solution to a migratory bird depredation conflict, or plans to deviate from the recommendation(s) from APHIS, they will contact the APHIS office that generated the Permit Review Form 37 to discuss.
- H. Partner closely with APHIS in NEPA evaluations, reviews, and processes, by providing and improving development of 1) migratory bird population information; 2) reported take by non-APHIS entities; and 3) biological information upon request to assist in APHIS completion of NEPA documents and procedures for activities involving the protection of American agriculture, and in support of migratory bird management goals.
- I. Coordinate with APHIS on WS-sponsored studies and WS-FWS team assignments, including review of project research protocols, expectations regarding time lines and outcomes, assessment of research outcomes, and discussions regarding research findings, recommendations, and policy ramifications.
- J. Make training available to APHIS agency employees on bird population and habitat inventory, monitoring and assessment methods, and management practices that avert detrimental impacts and promote beneficial proactive approaches to migratory bird conservation.
- K. Review and provide guidance on AWA regulations that could affect captive management of migratory birds.

VIII. Definitions

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

Bird Conservation Region – a geographic unit used to facilitate bird conservation actions under the North American Bird Conservation Initiative (<http://www.nabci-us.org/map.html>).

Birds of Conservation Concern – published and periodically updated by the FWS Division of Migratory Bird Management. The overall goal of this list is to identify the migratory and non-

migratory bird species that, in addition to species already listed under the ESA, 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>).

Council for the Conservation of Migratory Birds – an interagency council established by the Secretary of the Interior to oversee the implementation of Executive Order 13186.

Depredation – a predatory act or damage or loss to persons, property, agricultural crops, wildlife, or other natural resources caused by migratory birds. For permit purposes, a threat to public health and safety is also covered under migratory bird depredation permits.

Effects (adverse or beneficial) – “effects” and “impacts,” as used in this MOU, are synonymous. Effects may be direct, indirect, or cumulative, and refer to effects from management actions or categories of management actions on migratory bird populations, habitats, ecological conditions and/or significant bird conservation sites.

Incidental take – see Take.

Intentional take – see Take.

Migratory Bird – an individual of any species protected by the Migratory Bird Treaty Act; a list of protected migratory birds can be found in 50 CFR § 10.13 (<http://www.fws.gov/migratorybirds>).

Mitigation – 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, or e) compensating for the impact by replacing or providing substitute resources or environments. Definition taken from 40 CFR § 1508.20, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

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

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

Partners in Flight – 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 several categories of birds including: 1) species listed in the periodic report, Birds of Conservation Concern, published by the FWS Division of Migratory Bird Management (<http://www.fws.gov/migratorybirds>); 2) priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, U.S. Shorebird Conservation Plan, Partners in Flight Bird Conservation Plans); 3) species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; 4) listed threatened and endangered bird species in 50 CFR § 17.11; and 5) MBTA-listed gamebirds of management concern (as listed in the Birds of Management Concern list (<http://www.fws.gov/migratorybirds>)).

Take – to pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to pursue, hunt, wound, kill, trap, capture or collect (50 CFR § 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 (incidental) take, meaning take that results from, but is not the purpose of, the activity in question. Intentional and unintentional take constitute take as defined by the MBTA. The regulations implementing the BGEPA define take to mean pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb bald and golden eagles (50 CFR § 22.3).

Unintentional take – See Take.

U.S. Shorebird Conservation Plan – an international effort undertaken by a partnership of Federal, State, Tribal, and Provincial government agencies, non-governmental organizations, universities, 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>).

IX. Dispute Resolution

The Parties will attempt prevention of potential conflicts or resolutions of actual disagreements first at staff levels and elevated through the respective organizational levels if necessary. The Parties will attempt conflict prevention or traditional Alternative Dispute Resolution (ADR) processes to achieve consensus.

The Parties will use collaborative processes, including informal meetings or negotiations, 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. The Parties must notify each other in writing of a potential conflict or dispute and attempts to resolve the matter at the Field level within 30 days after receipt of written notice. If the Parties cannot resolve the matter at this level within 30 days, either Party may elevate the issue to the appropriate officials at Regional offices. If the Parties cannot resolve the matter at that level within 30 days, either Party may elevate the dispute to the Washington D.C. office of each agency.

X. Agreement

It is mutually agreed and understood that:

- A. This MOU in no way alters or diminishes either Party's obligations or responsibilities under any statute or other legal authority.
- B. This MOU in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
- C. The Parties shall schedule periodic meetings to report accomplishments, review progress, and identify opportunities for advancing the purposes, goals, and objectives of this MOU. Meeting participants will include the appropriate representatives from each agency and will replace the Joint Migratory Bird Working Group established in 1990 to address problems associated with migratory bird depredations.
- D. This MOU is intended 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.
- E. Any information requested by or furnished to the Parties under this MOU is subject to the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), and the provisions of section 1619 of the Food Conservation and Energy Act of 2008.
- F. The Parties agree that they will implement this MOU to the extent permitted by law and in harmony with agency missions, subject to the availability of appropriations and budgetary limits.
- G. This MOU is neither a fiscal nor a funds-obligation document. The Parties will handle any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. The Parties will outline such endeavors in separate written agreements. Such endeavors must be independently authorized by appropriate statutory authority; this instrument does not provide such authority. Specifically, this instrument does not establish authority for the noncompetitive award of any contract or other procurement agreement. Any contract or procurement agreement for training or other service must fully comply with all applicable requirements.
- H. Any press releases issued by either Party that reference this MOU, or the relationship established between the Parties of this MOU, must have prior written approval of both Parties.
- I. This MOU does not require, nor does it change current, contracts, permits, or other third-party agreements.

J. This MOU takes effect upon the signature of APHIS and FWS and shall remain in effect for five years from the date of execution. This MOU may be extended or amended upon written request of either APHIS or FWS and the subsequent written concurrence of the other Party. Either Party may terminate this MOU, in whole or in part, at any time before the date of expiration by providing the other Party with a written statement 30 business days prior to that effect.

The principal contacts for this instrument are as follows:

William H. Clay, Deputy Administrator
USDA APHIS Wildlife Services
1400 Independence Avenue, SW
South Agricultural Building
Washington, DC 20250

Brad Bortner, Chief
Division of Migratory Bird Management
USDI Fish and Wildlife Service
4401 N. Fairfax Drive, MBSP 4107
Arlington, VA 22203

The Parties hereto have executed this agreement as of the last date shown below.



Kevin Shea, Acting Administrator
U.S. Department of Agriculture
Animal and Plant Health Inspection Service

Date



Dan Ashe, Director
U.S. Department of the Interior
Fish and Wildlife Service

Date AUG 2 2012