

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COAST GUARD
AND THE
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 between the United States Coast Guard (USCG) and the U.S. Fish and Wildlife Service (FWS), herein collectively referred to as the Parties.

A. Purpose and Scope

This MOU is entered into pursuant to Executive Order 13186, 66 Fed. Reg. 3,853 (January 17, 2001), concerning the responsibilities of Federal agencies to protect migratory birds. The Executive Order directs executive departments and agencies to take certain actions consistent with the requirements of the Migratory Bird Treaty Act (MBTA)¹ and its underlying treaties. The purpose of this MOU is to strengthen migratory bird conservation through enhanced collaboration between the Parties. This MOU does not waive any applicable legal requirements and does not authorize the take of migratory birds. This MOU identifies specific areas where cooperation between the Parties will contribute substantially to the conservation and management of migratory birds and their habitats. This MOU replaces the expired Memorandum of Understanding between the USCG Assistant Commandant for Acquisitions and the FWS Addressing the USCG’s National Distress and Response System Modernization Project – Rescue 21, March 2003 (see Appendix C).

B. Authority

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

- Cooperation with Other Agencies, States, Territories, and Political Subdivisions, 14 U.S.C. § 141 (2012).
- Commandant; general powers, 14 U.S.C. § 93 (2012).
- Bald and Golden Eagle Protection Act, Pub. L. No. 92-535, 86 Stat. 1064 (1972); *as amended; classified to* 16 U.S.C. §§ 668-668d.
- Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973); *as amended; classified to* 16 U.S.C. §§ 1531-1544.

¹ This MOU is focused on improving bird conservation actions under the provisions of MBTA. However, some birds are protected by other environmental laws and associated regulations such as the Endangered Species Act (ESA) and the Bald and Golden Eagle Protection Act (Eagle Act). As such, the coordination, permitting procedures, and requirements under these statutes are different. Therefore, if migratory bird species also covered by ESA or the Eagle Act are present, coordinate with FWS to ensure compliance with the specific considerations of these statutes.

- Responsibilities of Federal Agencies to Protect Migratory Birds, Exec. Order No. 13,186, 66 Fed. Reg. 3,853 (2001).
- Fish and Wildlife Act of 1956, Pub. L. No. 1024, 70 Stat. 1119 (1956); *as amended; classified to 16 U.S.C. §§ 742a-754e.*
- Fish and Wildlife Conservation Act of 1980, Pub. L. No. 96-366, 94 Stat. 1322 (1980); *as amended; classified to 16 U.S.C. §§ 2901-2912.*
- Fish and Wildlife Coordination Act, Pub. L. No. 73-121, 48 Stat. 401 (1934); *as amended; classified to 16 U.S.C. §§ 661-667d.*
- Migratory Bird Conservation Act, Pub. L. No. 70-777, 45 Stat. 1222 (1929); *as amended; classified to 16 U.S.C. §§ 715-715r.*
- Migratory Bird Treaty Act of 1918, Pub. L. No. 65-186, 40 Stat. 755 (1918); *as amended; classified to 16 U.S.C. §§ 703-712.*
- Take of Military Birds By the Armed Forces, 72 Fed. Reg. 8931 (2007).

C. Missions of Both Parties

USCG

By law, the USCG has 11 missions. Many of the USCG's missions provide either direct or indirect benefit to migratory birds either through protection to migratory birds themselves or through protection of their habitat.

1. **Ports, Waterways, and Coastal Security (PWCS):** The PWCS mission entails the protection of the U.S. Maritime Domain and the U.S. Marine Transportation System and those who live, work or recreate near them. In addition, the PWCS mission includes the prevention and disruption of terrorist attacks, and response to and recovery from those that do occur. This security mission provides protection to our marine and inland river waterways and terrestrial shorelines and wetlands, which provides and protects key habitat for migratory birds.
2. **Drug Interdiction:** The USCG is the lead Federal agency for maritime drug interdiction² and shares lead responsibility for air interdiction with the U.S. Customs Border Protection.
3. **Aids to Navigation (ATON):** The USCG operates and administers the United States Aids to Navigation System (see section H for further description of ATON). ATON systems are established, operated and maintained by USCG to: assist the navigators in determining their position and a safe course; warn the navigator of dangers and obstructions; and, promote the safe and economic movement of military and commercial vessel traffic. By reducing the potential for ship groundings that could result in cargo release that might damage key migratory bird habitat, the ATON mission provides protection to our marine and inland river waterways and terrestrial shorelines and wetlands.
4. **Search and Rescue (SAR):** SAR is one of the USCG's oldest missions. It involves minimizing the loss of life, injury, and property damage or loss by rendering aid to persons in

² "Interdiction" is the interception of illegal drugs smuggled by air, sea, or land.

distress and also property in the maritime environment. USCG SAR response involves multi-mission stations, cutters, aircraft and boats linked by communication networks. These communication networks are incorporated within the Rescue 21 system (see Appendix C), including system upgrade from the Legacy National Distress System to more reliable ship-to-shore and shore-to-shore Rescue 21 antennas used for broadcast and improved communication during rescue operations.

5. **Living Marine Resources:** The USCG is the lead federal agency for at-sea enforcement of U.S. fisheries laws. The USCG's legal authority to enforce fisheries laws is the Magnuson-Stevens Act, which extended U.S. authority over fisheries to the 200 nautical miles (370.4 kilometers) limit authorized by international law. This mission helps in the conservation of migratory birds by protecting fisheries from depletion thereby securing a food source for migratory seabirds. Additionally, the USCG enforces seabird bycatch avoidance gear regulations that reduce the take of migratory seabirds in the course of commercial fishing activities. As part of our Living Marine Resources and Law Enforcement Missions and under the Marine Protection, Research, and Sanctuaries Act (NMSA), the USCG participates in the National Marine Sanctuaries (NMS) Program with the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS). The NMS program provides a coordinated and comprehensive approach to identify, designate and manage areas of the maritime environment of special national significance. Currently, there are 15 marine sanctuaries. The USCG's involvement with these sanctuaries is guided by policy contained in our USCG Instruction (COMDTINST) 16004.3, Coast Guard Participation in the National Marine Sanctuary Program. Protection of many of the 15 marine sanctuaries benefits migratory birds by helping to preserve and protect extensive marine habitat and bird nesting colonies.
6. **Marine Safety:** USCG personnel inspect commercial vessels, respond to pollution, investigate marine casualties and merchant mariners, manage waterways, and license merchant mariners. USCG officials also draft recommendations for the transit of hazardous cargo by ship, such as liquefied natural gas. The Vessel Traffic Services Program of the USCG provides essential services to mariners by facilitating the safe and efficient movement of vessel traffic. The marine safety mission of the USCG helps to protect marine and inland waterways and terrestrial shorelines and wetlands from accidents that could result in spills or pollution that might prove harmful to migratory birds and/or their habitat. Additionally, the USCG is authorized to regulate regattas and marine parades (marine events), which may involve extra or unusual hazards that will impact the safety of navigation to the extent that additional measures beyond application of the Navigation Rules are required. The USCG may grant a Marine Event Permit for marine events to mitigate extra or unusual hazards to navigation. An individual or organization planning to conduct a marine event must submit an application to the appropriate USCG office for review and approval.
7. **The USCG Bridge Program:** This program is responsible for approval of the location and plans for bridges and causeways constructed across navigable waters of the U.S. Any individual, partnership, corporation, or local, state, or federal legislative body, agency, or authority planning to construct or modify a bridge or causeway across a navigable waterway of the United States must apply for a USCG bridge permit.

8. **Defense Readiness:** The USCG has defended United States interests for more than 224 years and is one of the five U.S. armed forces branches. By statute, the USCG is an armed force, which has command responsibilities for the U.S. Maritime Defense Zone, countering potential threats to American's coasts, ports, and inland waterways through numerous port-security, harbor-defense, and coastal-warfare operations and exercises.
9. **Migrant Interdiction:** As the United States' primary maritime law enforcement agency, the USCG is tasked with enforcing immigration law at sea. The USCG conducts patrols and coordinates with other federal agencies and foreign countries to interdict undocumented migrants at sea.
10. **Marine Environmental Protection:** The Marine Environmental Protection program develops and enforces regulations to avert the introduction of invasive species into the maritime environment, stop unauthorized ocean dumping, and prevent oil and chemical spills. This program helps migratory birds by protecting their habitat from pollution, invasive species, and oil spills. Additionally, the USCG has a statutory mandate to not only prevent but to respond to oil spills and releases of hazardous substances under the Federal Water Pollution Control Act, the Oil Pollution Act of 1990, and the Comprehensive Environmental Response, Compensation, and Liability Act. Once a spill or release occurs in the marine environment, it poses an immediate and lasting threat to migratory birds and their habitat. Effective response by the USCG removes the pollutant and/or lessens its negative effects on the environment and on migratory birds. The USCG Sea Partners Campaign is the USCG's Marine Environmental Protection outreach and education program. The primary objective of the Sea Partners Campaign is to educate communities at large in developing awareness of marine pollution issues and improving compliance with marine environmental protection laws and regulations. This program helps to educate the boating public about the negative effects of marine pollution, a major threat to migratory seabirds, and contributes to preventing marine pollution of migratory bird habitat.
11. **Ice Operations:** The USCG conducts icebreaking services to assist vessels and communities in emergency situations and facilitate essential commercial maritime activities in the Great Lakes and Northeast regions. Beyond domestic operations, the USCG operates the only U.S.-flagged heavy icebreakers capable of providing year-round access to the Polar Regions. USCG icebreakers conduct and support scientific research in the Arctic and Antarctic that could benefit migratory bird habitat by researching threats such as sea level rise and climate change.
12. **Law Enforcement Missions:** 14 U.S.C. § 89 gives the USCG the authority to enforce or assist in enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to U.S. jurisdiction. Some other laws and treaties that give USCG enforcement authority are: the Clean Water Act, the ESA, the MBTA, the Non-Indigenous Species Aquatic Nuisance Prevention and Control Act of 1990 which provides the USCG with authority to control biological contamination of ballast water in ships visiting U.S. ports, and the Act to Prevent Pollution from Ships (APPS) as amended by the Marine Plastic Pollution Research and Control Act of 1987 which authorizes the USCG to enforce Annex V

of MARPOL³ which prohibits disposal of plastics and garbage at sea. Floating trash and plastic debris in particular is known to harm marine wildlife, including seabirds, through ingestion or entanglement with abandoned fishing gear and other large debris. This program directly benefits migratory birds by helping to lessen marine litter harmful to seabirds.

As a maritime service and steward of the United States' marine environment, the USCG's goal is to manage the land, sea, and air resources in an environmentally responsible manner reflective of its role as an environmental regulatory agency. The USCG contributes to the preservation of marine biodiversity and preventing marine ecosystem degradation by properly managing its own actions and ensuring accountability among those it regulates. The USCG's environmental goal is to ensure that all USCG operations, facilities, equipment, and vessels that support its 11 missions comply with applicable Federal, State, and local environmental requirements, including the MBTA and Executive Order 13186, in the most cost effective manner.

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 Migratory Bird Program serves as the 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 and issue permits for intentional take. Migratory Bird Programs help maintain healthy populations of migratory birds and their habitats to 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. The Ecological Services Field Offices across the country serve as the primary contacts for

³ MARPOL is short for Marine Pollution, but the acronym is used to refer to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978.

technical assistance and environmental reviews of projects involving migratory bird issues. The Field Offices coordinate with the Regional FWS Migratory Bird Offices, as necessary, during these reviews, regarding permits and overall migratory bird conservation strategies.

4. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, Eagle Act, ESA, and other laws pertaining to migratory bird conservation.
5. The National Wildlife Refuge System manages National Wildlife Refuges and Waterfowl Protection Areas across the country, many of which were established to protect and conserve migratory birds. Refuges not only protect important habitat, but also focus on monitoring migratory bird populations and native habitat restoration for the benefit of migratory birds. The Office of Refuge Law Enforcement enforces the legal provisions of wildlife laws on National Wildlife Refuges, Waterfowl Production Areas, and National Fisheries. The Office of Refuge Law Enforcement also assists OLE when needed.
6. The Science Applications program works with other Service programs and partners to ensure that the necessary science, tools, and capacity are available for planning and implementing the most efficient and effective conservation actions to protect fish and wildlife including migratory birds. They facilitate regional self-directed science management partnerships called Landscape Conservation Cooperatives to develop and apply shared science capacity to conservation.

D. Statement of Mutual Interest and Benefit

Both Parties have interests and responsibilities to ensure that the Nation's terrestrial and marine environments are protected. 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. The Parties also agree that it is important to identify measures that will: 1) promote migratory bird conservation; 2) restore and enhance migratory bird habitat by incorporating ecosystem specific considerations into planning processes; and 3) recognize that actions that may provide long-term benefits to migratory bird populations as a whole may result in short-term negative impacts on individual birds. The following statements which set forth the obligations of the Parties are intended to establish the protocols by which the above-described mutual interests and the conservation intent of EO 13186 will be implemented.

The Parties endorse efforts to make complying with the MBTA during emergencies that threaten human health and safety and the safety of other wildlife a more efficient process. For example, the National Contingency Plan, 40 C.F.R. 300, establishes the National Response System (NRS). The NRS is an organizational structure that fosters and encourages effective and coordinated preparedness and response actions among all levels of government. The Department of the Interior and the FWS work with the USCG during both oil-spill planning and oil-spill response to ensure that all wildlife issues are incorporated in plans and response procedures. In addition, the USCG has provided funding through FWS (see Appendix C) enabling further research into reducing the deleterious effects of communication towers on migratory birds. This funding

resulted in the 2012 completion of a tall-tower research project in Michigan (six tall towers) and New Jersey (one Rescue 21 tower). The objective of this study has been to reduce bird collisions with communication towers.

It is in the interests of both Parties to thoroughly assess any USCG actions, policies, and projects that may negatively affect migratory birds; with the goal of considering and implementing mitigation measures as appropriate. The USCG uses the National Environmental Policy Act (NEPA) process as its primary means to evaluate the potential environmental impacts of its proposed actions and alternatives, including impacts to migratory birds and their habitats. However, in certain cases there are also alternative means of evaluation and mitigation employed through consultations under other environmental planning mandates and within command structures during spill planning and response activities (e.g., consultations under Section 7 of the ESA). If proposed USCG actions may negatively impact migratory birds, FWS offers the opportunity for USCG to collaborate during NEPA compliance and coordination and/ or during ESA or other environmental planning consultations as they are applicable to both FWS and USCG for the development and implementation of suggested methods for mitigating or avoiding such impacts to migratory birds. FWS further suggests that USCG coordinate with biologists experienced with strategies that avoid and/or minimize negative effects on migratory birds to ensure that best practices are used when appropriate.

The potential impacts on migratory birds associated with USCG operations in the marine and shore-side environment may include effects such as the possibility of attraction to, and/or collision with USCG aids to navigation (ATON) (see Section H. for a detailed definition of aids to navigation), communication towers, antennas, and wind turbines, and noise from, or collision with, USCG vessels and/or aircraft, impacts from USCG oil spill response operations, impacts from marine events permitted and regulated by the USCG and impacts from bridge construction, alteration, or repair permitted by the USCG, impacts from electromagnetic radiation at USCG communication towers, and affects from facility maintenance practices. Migratory birds are attracted to some USCG controlled aids to navigation such as lighthouses and buoys or day beacons. Therefore, proposed ATON operations should be evaluated for potential impacts on migratory birds. Minor and major aids to navigation (major lighted aids are aids whose light is visible for up to 10 nautical miles, e.g. lighthouses) can provide an attractive location for birds to nest, and light from major aids to navigation may present a hazard to birds by causing birds to collide with the aid structure. This has been well documented in scientific literature. Effects of aids to navigation construction or maintenance may also result in potential habitat loss through displacement or disturbance and or direct impacts to migratory birds themselves. Other impacts from USCG shore side facility construction and maintenance, may also affect migratory birds and their habitats in direct and indirect ways. Coordination and collaboration between Parties to reduce these impacts is, thus, also recommended here. Finally, wind turbines and communication towers or antennas owned by the USCG may affect migratory birds through collisions and radiation. Some communication towers attract migratory birds by providing available nesting sites, and both wind turbines and communication towers can present a hazard to birds by causing birds to collide with the structures. In the case of turbine blades, birds may be injured or killed by barotraumas (i.e., rapid pressure changes that cause severe internal organ damage) from blade wake turbulence. Certain types of lighting on towers or antennas can also be problematic for birds. Steady burning red (L-810) lighting and adjacent security lighting that

is left on all night is attractive to night-active migratory birds especially during inclement weather.

The USCG acts bilaterally in the sense that it enforces some environmental laws and regulations that provide direct or indirect protection to migratory birds while ensuring its own compliance with these laws as it conducts its missions, activities and operations. As discussed in Section C of this MOU, the USCG carries out many missions that have direct and indirect benefits to migratory birds and their habitat. Engaging in these beneficial missions sometimes necessitates that USCG operations occur in close proximity to birds and their habitat, which may have the potential to negatively impact birds. The USCG recognizes the importance of ensuring that the operations necessary to carry out its vital missions are compliant with MBTA requirements and protect migratory birds as much as possible. Above and beyond implementation of its 11 mandated missions, the USCG currently carries out additional programs, plans, projects, and actions and agreements, and maintains policies, guidance, and training initiatives, that sustain the ecological integrity, and conservation of migratory birds. The majority of these are discussed in detail in Appendix A of this MOU.

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 USCG and FWS missions and capabilities, each Party shall:

1. Support the conservation intent of EO 13186 and the migratory bird conventions, 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.
2. Develop conservation measures that are consistent with EO 13186 resulting in the management of avian stressors (see Appendix B), especially those that lead to the unintentional take of migratory birds.
3. Collaboratively develop and implement periodic and reoccurring training of USCG personnel on the requirements of the MBTA and associated regulations and related mandates and implementation of migratory bird conservation measures. These efforts have been very effective in the past, and we expect they will continue. Training also helps USCG personnel to “champion” bird conservation to other stakeholders with whom they are involved.
4. Promote economic and recreational value of birds to the general public as appropriate by developing and integrating information on migratory birds and their habitats into outreach and education materials and activities.
5. Protect, restore, and enhance habitat of migratory birds on facilities and lands administered (controlled or leased) by the USCG and prevent the loss or degradation of remaining natural habitats. This includes:
 - a. Collaboration on development and implementation of management practices that

minimize or avoid the effects of avian stressors (see Appendix B) on migratory bird populations and/or their migration, breeding, nesting, foraging, staging, or wintering habitats.

- b. Working collaboratively with other Federal and State agencies, Tribes, non-governmental organizations, private landowners, and other partners, where appropriate, in joint efforts to identify, protect, restore, enhance, monitor, and manage important migratory bird areas (e.g., Important Bird Areas and other significant bird sites that occur on USCG properties) potentially affected by agency actions, focusing efforts in areas of current or future project activities. This includes recognizing Marine Protected Area, Marine Important Bird Area, and National Marine Sanctuary Area designations.
 - c. Using available authorities to enter into agreements with other Federal agencies, States, other governmental entities, and private conservation organizations to conserve and enhance habitat while still enabling the USCG and other organizations to effectively conduct their primary missions.
 - d. Preventing, containing, or abating pollution detrimental to migratory birds and their habitats.
 - e. Preventing or abating detrimental alteration of migratory bird habitats.
6. Promote research and information exchange related to migratory bird conservation including inventorying and monitoring of birds located on USCG facilities, developing studies related to agency decisions and management practices that may impact migratory birds, and gathering information on environmental contaminants and other avian stressors (see Appendix B) that are relevant to the conservation of migratory birds. The Parties agree to:
- a. Collaborate on warranted studies: (1) on migratory bird species that may be potentially affected by agency actions, with an emphasis on Birds of Conservation Concern; (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 for avian stressors (see Appendix B) created by USCG actions that will negatively impact migratory birds. Examples include:
 - i. Develop protocols for research focused on developing better methods of evaluating impacts of agency actions, (particularly associated with navigational aids, airfield operations, wind turbines, and communication or other similar towers over 200 feet tall), to migratory birds;
 - ii. Collaborate on enhancement of the National Response System to design and incorporate migratory bird habitat and population conservation principles, measures, and practices in Area Contingency Plans;
 - iii. Work cooperatively to develop appropriate actions to mitigate impacts to nesting migratory birds when construction, removal, or maintenance of ATONs is required.

- In addition, develop a specific coordination process and corresponding job aid to instruct ATON program activities, especially in remote locations where the normal coordination process is not practical;
- iv. Monitor and report to appropriate regional FWS, where feasible, migratory bird mortality as part of maintenance of ATON operations;
 - v. Consider the installation of bird exclusion devices to prevent birds from nesting on ATONs and work with FWS to determine which devices are recommended. In addition, consider, where appropriate, finding practical ways to accommodate nesting birds in locations that do not interfere with ATON operation or maintenance (e.g., nesting platforms).
- b. Share inventory, monitoring, research, and study data in a timely fashion with other Federal, State and local 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) and the Computerized Database Analysis System (CDAS), and could be made available through information sharing networks such as the Avian Knowledge Network (AKN).
 - c. Promote migratory bird conservation in international activities with other countries and international partners as appropriate or relevant to each Party's authorities. This may include assisting other nations, as appropriate and practicable, in sustaining migratory bird populations and habitats through technical cooperation, policy development, and disaster assistance, including conservation planning, project support, cooperative studies, education, and training.
 - d. Promote 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) identify avian stressors (see Appendix B) produced by specific project activities; and 5) develop management practices that avoid or minimize adverse impacts and promote beneficial proactive approaches to migratory bird conservation.
 - e. Identify best practices for: 1) avoiding and minimizing take of migratory birds; 2) conserving and restoring migratory bird habitats; 3) promoting bird conservation; 4) monitoring demographic parameters of migratory birds; and 5) standardizing collection techniques of migratory bird data to allow cross-study comparison. Best practices that are feasible will be incorporated into job aids, guidance, and agency policy documents where appropriate.
 - f. Develop 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.

- g. Participate in or promoting the implementation of existing regional or national inventory and monitoring programs such as Breeding Bird Survey (BBS), BBIRD, Christmas Bird Counts, bird atlas projects, or game bird surveys on USCG and FWS properties where practicable.
 - h. Collaborate 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 have been developed and implemented.
 - i. Contribute information on migratory bird resources to partners developing outreach and education materials and activities.
 - j. Enhance beneficial plantings of native trees, shrubs and grasses at USCG sites throughout the country as stopover and breeding habitat for both resident and migrant birds. Many USCG stations and communication areas make ideal protected sites for artificial structures attracting such declining species as Purple Martin (*Progne subis*) (houses) and Chimney Swift (*Chaetura pelagica*) (towers) as well as placement of bird houses for songbirds and Wood Ducks (*Aix sponsa*) and nesting platforms for Osprey (*Pandion haliaetus*).
 - k. Work collaboratively with the USCG on USCG-specific job aids designed to improve the ability of the USCG to comply with MBTA and Eagle Act requirements.
7. Periodically evaluate the measures described in this MOU intended to protect, restore, and enhance migratory bird populations and their habitats, including avoiding or minimizing adverse impacts to migratory birds. The FWS Division of Migratory Bird Management, Ecological Services, Endangered Species Offices, and the USCG agree to design and implement feasible and effective conservation measures.
8. Participate, as appropriate, in the interagency Council for the Conservation of Migratory Birds (through the Department of Homeland Security representatives) to share information on the conservation of migratory birds. 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; and
 - d. If appropriate, the USCG will nominate USCG projects or actions that exemplify the implementation of the EO for the Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

F. USCG Obligations:

Where conservation measures and best practices are discussed in this section, it is understood that many conservation measures and/or best practices have been developed to benefit a variety of migratory bird species and their associated habitats. Some of these conservation measures/best practices may be directly applicable to USCG military or non-military readiness related activities; however, the appropriateness and practicality of implementing any specific conservation measure will have to be determined on a case-by-case basis. The FWS will work cooperatively with the USCG and provide existing conservation measures, develop new measures as needed, and provide recommendations regarding feasible conservation measures/best practices for USCG projects and actions that have the potential to take migratory birds. To the extent required by law or to the extent allowed by law, subject to the availability of appropriations and within Administration budgetary limits, and in harmony with USCG missions and capabilities, USCG shall:

1. Follow all migratory bird permitting requirements for non-military readiness activities that are subject to 50 CFR 21.22 (banding or marking), 21.23 (scientific collecting), 21.26 (special Canada goose permit), 21.27 (special purposes), or 21.41 (depredation). No permit is required to take birds in accordance with Section 21.43 – 21.47 (depredation orders), but any requirements or restrictions governing the activities authorized by those regulations must be adhered to.
2. Follow all provisions outlined in the 2007 Military Readiness Rule authorizing the incidental take of migratory birds during military readiness⁴ activities including:
 - a. Conferring and cooperating with FWS on the development and implementation of appropriate conservation measures and best practices to avoid, minimize, or mitigate impacts from any ongoing or proposed activities that the USCG determines may result in a significant adverse effect on a population of a migratory bird species.
 - b. Monitoring the implementation of any readiness conservation measures committed to by the USCG to mitigate potential significant adverse effects.
3. Incorporate comprehensive migratory bird management objectives, conservation measures and best practices in USCG policy and planning documents, as appropriate, including COMDTINST M16475.1 (series) NEPA Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M5090.3 (series), Natural Resources Management Policy, any future Integrated Natural Resource Management Plans, “Beneficial Landscaping Guidance,” and other environmental documents consistent with NEPA, the Council for Environmental Quality (CEQ) NEPA regulations, and other Federal environmental mandates.
4. Revise the USCG Instruction Manual (COMDTINST M5090.3 (series)), Natural Resources Management Policy, to include a discussion of, and implementation strategy for FWS policy

⁴ Military readiness means, all training and operations of the USCG that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.

and guidelines on bird nest removal.

5. Revise USCG Instruction Manual (COMDTINST M5090.3 (series)), Natural Resources Management Policy, to include a discussion of the threat to birds from feral and unrestrained cats.
6. Reference USCG environmental policy and guidelines on migratory birds in appropriate USCG Office of Navigation Systems (CG-NAV) policy (e.g., ATON policy) and other policy, as appropriate. Implement such policy and guidelines through development of USCG District, Sector, and unit-level Standard Operating Procedures where appropriate.
7. For routine scheduled maintenance of ATONs where no safety of human life issue exists, do not conduct routine maintenance of ATONs where such maintenance would take migratory birds or disturb an active nest until the nest becomes inactive. CG-NAV and/or appropriate District staff will work with Headquarters FWS Migratory Bird Management Division and/or appropriate FWS Regional staff to develop a nationwide or regional programmatic approach to address the unavoidable removal of active nests due to ATON operations that are necessary for safety of human life. Until a programmatic solution is complete and where possible, on a case by case basis, District staff will request FWS migratory bird permits for unavoidable removal of active nests due to ATON operations that are necessary for the safety of human life.
8. The Office of Navigation Systems (CG-NAV) at USCG Headquarters will provide a list to Headquarters FWS of all USCG major federal aids to navigation (defined as lighted ATON with a nominal range of 10 nautical miles or greater including lighthouses). Included in this list will be the color, characteristic, flash rate (where applicable), lumen output, height, and location of the major aid. This data will be compared to FWS guidelines on the color and type of lights and heights that might be problematic for birds. If FWS and USCG agree that a particular major aid is negatively impacting migratory birds, USCG will work with FWS to ascertain whether mitigation measures can be applied to the major aid to avoid, or minimize the impact without endangering safety of life or navigation or unacceptably impeding other critical USCG statutory mission requirements. Where new aids are to be placed, USCG will work with FWS to use the most bird-friendly practices, especially in regard to lighting.
9. Reference applicable USCG environmental policy and guidelines on migratory birds in appropriate USCG marine event policy and guidance documents. Coordinate with the FWS to develop best practices in achieving compliance with the MBTA when the USCG is permitting or regulating marine events that could impact migratory birds.
10. Reference applicable USCG environmental policy and guidelines on migratory birds in appropriate USCG Bridge Program policy and guidance documents. Coordinate with the FWS to develop best practices in achieving compliance with the MBTA when the USCG is a permitting authority for bridges. In these instances, the USCG might act as the lead federal agency under NEPA/MBTA or be a cooperating agency.
11. Consistent with imperatives of safety and security, allow FWS and other partners reasonable

access to USCG properties for conducting sampling or survey programs such as Monitoring Avian Productivity and Survivorship, Breeding Bird Survey, International Shorebird Survey, and breeding bird atlases.

12. Prior to starting any activity that is likely to result in take of migratory birds:

- a. Engage in early planning and scoping with the FWS to identify migratory species likely to occur in areas affected by a proposed action, assess potential adverse impacts of a proposed action, proactively address migratory bird conservation, and initiate appropriate actions to avoid or minimize the take of migratory birds.
- b. Assess and document, through the project planning process (using NEPA and or the ESA Section 7 consultation process when applicable) the effect of the proposed action on species of concern. Use best available demographic, population, or habitat association data in the assessment of effects on species of concern.

13. Manage USCG property and non-military readiness activities in a manner that supports migratory bird conservation, in such a way that actions may have short-term effects on birds, but long-term benefits to bird populations (USCG examples of this are enumerated in Appendix A, USCG Actions to Ensure its Operations are Protective of Migratory Birds). The USCG will continue to support migratory bird conservation by giving consideration to the following factors:

- a. Habitat protection, restoration, and enhancement. USCG facilities may contain important habitats for migratory birds and some unique, sensitive, endangered and/or declining habitat types that may require special management attention to include:
 - i. Grasslands – Native grassland communities require intensive management to maintain and restore vigor and species diversity and to provide habitat for migratory birds and other wildlife dependent on native grasslands. Grassland management and restoration tools include controlled burning, mowing, native species planting, and exotic plant removal. Mowing is an effective management tool for grassland habitats when used “outside” of the breeding season to ensure avoidance of destruction and/or disturbance of ground-nesting birds. Current research suggests that pesticides may play a significant role in grassland bird declines. Therefore, grassland management should focus on non-chemical methods to the maximum extent practicable. As a general proposition, most USCG bases and properties do not contain large areas of grasslands. However, in the event a controlled burn of grasslands is considered and migratory bird species are present, the USCG will coordinate with FWS and local fire officials before taking this action. In conducting base landscape maintenance activities, the USCG will consider applying the procedures discussed in the “USCG Beneficial Landscaping Guidance,” a publication specifically designed for USCG facilities where such maintenance occurs.
 - ii. Riparian and wetland habitats – USCG lands contain some riparian and wetland

habitats that may be critical for migratory birds. USCG will strive to prevent the destruction or degradation of wetlands and riparian vegetation, and also restore those habitats, when feasible, where they have been degraded. USCG actions go through the NEPA process that ensures compliance with Federal, State, and local environmental laws and regulations, where applicable, including preservation and conservation of wetlands and riparian vegetation. COMDTINST M5090.3 (series) and the USCG Beneficial Landscaping Guidance (See Appendix A) both incorporate the preservation and restoration of wetlands, riparian vegetation and migratory bird habitat protection policy and guidelines. The guidance in the USCG's "Beneficial Landscaping Guidance" enumerates the different projects undertaken by several USCG facilities to preserve grassland, riparian and wetland habitats which in the long run benefit migratory birds and their habitats.

- iii. Coastal beach, salt marsh, dune, and rocky shore habitats – USCG lands support some of the best remaining undisturbed coastal and offshore rock habitats. USCG will strive to protect, restore and prevent destruction of coastal and island habitats that are important to breeding, migrating, and wintering shorebirds, salt marsh land birds and colonial water birds (including seabirds). USCG will coordinate with FWS before taking any action that may take migratory birds and/or adversely affect their habitats. COMDTINST M16004.2 (series), Coastal Zone Management Act (CZMA), Federal Consistency Procedures includes the USCG's process and policies" for compliance with CZMA regulations which in turn helps in the preservation of coastal zone resources identified in each State's approved CZM Program. Many of these coastal resources provide nesting and resting habitat as well as foraging opportunities for migrating birds. The USCG's "Beneficial Landscaping Guidance" also discusses the preservation and conservation of wildlife habitats including migratory bird habitats and the projects undertaken by several USCG facilities towards this purpose. Likewise, the USCG's, "Beneficial Landscaping Guidance" publication discusses the minimization of use of pesticides which in the long run also benefits migratory birds. Examples of USCG conservation and preservation of migratory birds and their critical habitats are cited in Appendix A.
 - iv. Wooded Habitats - USCG lands and facilities likely have some woody vegetation (e.g., shrubs and trees) that provide nesting, foraging, and roosting habitat for birds. These habitats often require routine maintenance (i.e., trimming, etc) to remain healthy and to avoid interfering with essential USCG equipment. Management of woody vegetation should strive to avoid removal and trimming during the breeding season unless the vegetation requires management for human health or safety concerns.
- b. Fire and fuels management practices – Fire plays an important role in shaping plant and animal communities and is a valuable tool in restoring habitats altered by decades of suppression. Fire management may include fire suppression, but also involves fire prevention and fuels treatment, including prescribed burning and monitoring, to protect communities and provide for healthy ecosystems. Due to the relatively small size of

USCG facilities, the use of fire management practices is not generally practiced. However, if a situation arises where a prescribed burn of potential migratory bird habitat is required, the USCG will coordinate with FWS and local fire officials regarding the best fire management practice before taking any fire actions.

- c. Management practices for invasive species and aquatic nuisance species – Invasive Species and Aquatic Nuisance Species (ANS) are a threat to native habitats and wildlife species throughout the United States, including USCG lands. Efforts to control/contain these species must take into account both the impacts from invasive species and the effects of the control efforts on migratory bird populations. Invasive Species and Aquatic Nuisance Species that can threaten migratory birds and their habitats include, but are not limited to, exotic grasses, trees and weeds, terrestrial and aquatic insects, rats, mice, ungulates, snakes, non-native birds, and stray and feral cats. In the Pacific Islands, significant threats to migratory birds are also posed by invasive rodents, pigs, and reptiles, which may be transported on vessels or occur on USCG lands. The USCG will continue to take proactive measures to monitor and mitigate the presence and effects of ANS at USCG facilities and within the maritime industry pursuant to applicable legal authorities. The USCG recognizes the importance of controlling invasive species. Together with other agencies within Department of Homeland Security (DHS), the USCG has multiple responsibilities that involve invasive species. USCG works with other agencies to develop and enforce international fisheries and maritime agreements, including those concerning ballast water management. The USCG is a member of the National Invasive Species Council and has established a national Ballast Water Management program. The USCG has established both regulations and guidelines to prevent the introduction and spread of ANS. The USCG's final rule on Ballast Water Management Standards, was published on March 23, 2012 in the Federal Register, and became effective 90 days after publication, or June 21, 2012. The USCG will also include a discussion of the threat to birds from feral and unrestrained cats in the next revision of the Natural Resources Management Policy, COMDTINST 5090.3 (series).
- d. Communication towers, utilities and energy development – Increased communication demands, changes in technology and the development of alternative energy sources result in negative impacts on migratory birds. For USCG communication tower, utilities and energy development actions that may “take” migratory birds, USCG will review with FWS assistance, best practices outlined in FWS Guidance and coordinate with FWS on the best practices that are most suitable for USCG implementation and for prevention of take. Available guidance includes (but is not limited to):
 - i. Avian Power Line Interaction Committee - Suggested Practices for Avian Protection on Power Lines (2006)
 - ii. Avian Power Line Interaction Committee - Reducing Avian Collisions with Power Lines (2012)
 - iii. U.S. Fish and Wildlife Service Land-based Wind Energy Guidelines (2012)
 - iv. U.S. Fish and Wildlife Service Guidance on the Siting, Construction, Operation, and Decommissioning of Communication Towers (2000) and FWS comments to the FCC on towers and lighting (2007)

The USCG will coordinate with FWS, as needed, in considering potential effects on migratory birds of proposals for locating communication towers, power lines or wind turbines on USCG lands. Construction of new utility and energy systems and associated infrastructure should be designed to avoid or minimize impacts on migratory bird populations where feasible. Existing utilities may also be considered for retrofitting to reduce impacts, including electrocutions and wire collisions. The USCG will work to minimize lighting impacts, where practicable by using strobe, strobe-like, or blinking red incandescent lights, downward focusing security lights to reduce skyward illumination, and/or equipping structure lighting with heat or motion detectors that come “on” only when needed to reduce continuous illumination on outbuildings.⁵ The USCG will obtain needed permits from the FWS when a nest on a USCG structure threatens human health and safety or the safety and health of the bird unless a programmatic nationwide or regional approach to compliance has been agreed to and implemented by the FWS and USCG.

- e. Recreation and public use – The demand for outdoor recreational opportunities on public lands is increasing. Impacts on migratory birds may occur through direct and indirect disturbances by visitors and also through agency activities associated with providing recreational opportunities to visitors and installation personnel and morale, including the construction and operation of associated facilities. USCG provides access to military lands and shore facilities for recreation and other public use, such as the Cape May Training Center in Cape May, New Jersey, where such access to the beaches located on USCG property, does not compromise security and safety concerns or impact migratory birds, other legally protected species, or their habitats (see Appendix A, Section 6.b of this MOU for an example of how USCG achieves this).
 - f. Area Contingency Plans – The USCG will seek continued involvement of FWS as a Federal Partner in the development of Area Contingency Plans (ACPs). Specifically, the USCG will seek involvement of FWS Regional or Headquarters staff, as applicable, with expertise in migratory birds when substantially updating ACPs or in the development of new ACPs. These plans describe strategies and tactics for responding to a worst-case discharge of oil or hazardous substance spill and identify sensitive natural resources that could be affected. This process supports a common view of the rollout of response actions and addresses the shared responsibilities of both agencies. Impacts on migratory birds along with many other wildlife issues are considered through this process.
14. Where conservation measures require inventorying and monitoring, develop and implement new and/or existing inventory and monitoring programs, at appropriate scales, using national standardized protocols, to evaluate the effectiveness of conservation measures and best practices to minimize or mitigate take of migratory birds, with emphasis on those actions that have the potential to significantly impact species of concern.

⁵ A study was conducted on tower lighting as part of the Rescue 21 MOU between USCG and FWS. Since FAA published a letter in 2012 indicating a pending change to their 2007 lighting circular, USCG should initiate its tower lighting program concurrent with the FAA’s most recent lighting guidance especially in regard to L-810 red lights.

15. Where appropriate and feasible, work with FWS to identify opportunities and processes for USCG vessels and aircraft to accommodate FWS staff ride-alongs where such accommodation will not interfere with USCG mission capability or create a financial burden on the USCG but will enable the FWS to conduct important research beneficial to migratory seabirds.
16. Advise the public of the availability of this MOU through a notice published in the Federal Register.

G. The FWS Shall:

1. Provide USCG with current migratory bird POCs at FWS Headquarters and Regional Offices.
2. Work with USCG by providing information on common avian stressors (See Appendix B) and recommendations to minimize adverse effects of these stressors upon migratory birds from USCG actions.
3. Through the Division of Migratory Bird Management, continue to maintain, update, and promote awareness of the current FWS Web page on permits at <http://www.fws.gov/migratorybirds/mbpermits.html> that provides links to all offices responsible for issuing permits and permit application forms for take of migratory birds.
4. Provide essential background information to the USCG, when requested, to ensure sound management decisions. This may include:
 - a. Migratory bird distributions, status, key habitats, conservation guidelines, and risk factors within each Bird Conservation Region.
 - b. Changes to the MBTA and its regulations and procedures or other Acts and their regulations affecting management of migratory birds.
 - c. Population trends of species that might be affected by activities at USCG facilities or at sea.
 - d. Protection measures for reducing human-caused bird mortality that may be applicable to USCG activities, as new information becomes available.
 - e. Proactively share with the USCG new guidance documents, tools, and job aids designed to improve understanding of MBTA requirements and further the ability of the USCG to promote the conservation of migratory birds.
5. Update the FWS publication of *Birds of Conservation Concern* at regular intervals, so it can reliably be referenced.

6. Work with the USCG Federal On-Scene Coordinator (FOSC) during oil spill response to ensure coordination between FWS ESA consultation and MBTA compliance activities.
7. Provide suggested accepted best practices that could be programmatically adopted by USCG in dealing with migratory bird issues.
8. Work to identify special migratory bird habitats (i.e., migration corridors and staging, wintering, nesting, brood-rearing, and stop-over habitats, ecological conditions important to nesting habitats, and foraging habitats on or adjoining the Outer Continental Shelf to aid in collaborative planning).
9. Using the Point of Contact list (Appendix D), the FWS will continue to provide general guidance and information regarding migratory birds and their habitats to the USCG, upon request. This guidance includes technical assistance for avoiding or minimizing project-related impacts on migratory birds resulting from USCG actions.
10. The Migratory Bird Program will develop and provide FWS guidance to the Ecological Services Field Offices to ensure consistency in the interpretation and implementation of the MBTA as it applies to all Federal actions.
11. Develop coordination procedures (with USCG input) that detail how to use the NEPA process for coordination of USCG actions that may impact migratory birds with FWS Regional Migratory Bird offices and HQ FWS Migratory Bird Division. Such procedures will indicate when it is appropriate to consult at the FWS regional or Headquarters level, who should be consulted within FWS and ensure a timely response to inquiries. Additionally, FWS will include when it may be appropriate for USCG to use the ESA section 7 process to coordinate on migratory birds especially for actions taken by the USCG FOSC during oil spill response as NEPA does not apply to the FOSC's emergency response actions. FWS will append these procedures to this MOA once they are final.
12. In the case of oil spill response activities that may negatively affect migratory birds and for which NEPA is not applicable, participate in alternative means of evaluation and mitigation within response command structures or through consultations under other applicable environmental planning mandates, such as consultations under Section 7 of the ESA, if spill response activities may or will negatively impact migratory birds.
13. Review and comment on NEPA documents and other planning documents forwarded by USCG Headquarters and field units that include actions impacting migratory birds.

H. Definitions

Action – a program, activity, project, official policy, rule, regulation, or formal plan directly carried out by USCG, but not a military readiness activity.

Aids to Navigation (ATON) – maritime structures that employ a simple arrangement of colors,

shapes, numbers and light characteristics to mark navigable channels, waterways and adjacent obstructions. The primary components of the U.S. Aids to Navigation System are beacons and buoys. Beacons are aids to navigation structures that are permanently fixed to the earth's surface. They range from lighthouses to small, single-pile structures and may be located on land or in the water. Lighted beacons are called lights; unlighted beacons are called day-beacons. Beacons exhibit a day-mark to make them readily visible and easily identifiable against background conditions. Buoys are floating aids that come in many shapes and sizes and are moored to the seabed by concrete sinkers with chain or synthetic rope moorings of various lengths connected to the buoy's body. They are intended to convey information to the boater by their shape or color, by the characteristics of a visible or audible signal, or a combination of two or more such features.

Best Practices – specific actions designed to avoid or minimize the production of a project-related stressor or the exposure of birds and their resources to stressors produced by agency actions (see also Conservation Measures).

Breeding Biology Research and Monitoring Database (BBIRD) – national, cooperative program that uses standardized field methodologies for studies of nesting success and habitat requirements of breeding birds (<http://pica.wru.umt.edu/BBIRD/>)

Breeding Bird Survey (BBS) – a standardized international survey that provides information on population trends of breeding birds, through volunteer observations located along randomly selected roadside routes in the United States, Canada and Mexico (<http://www.mbr-pwrc.usgs.gov/bbs/html>).

Bird Conservation Region (BCR) – a geographic unit used to facilitate bird conservation actions under the North American Bird Conservation Initiative (<http://www.manomet.org/USSCP/bermaps.html>).

Birds of Conservation Concern – a list that is 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 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>.

Conservation Measure – any action undertaken to address project-related stressors/impacts that ultimately improve the conservation status of one or more migratory bird species. Conservation measures split into two categories: Ecological/Habitat measures (driven by EO 13186) and Avian Mortality measures (driven by MBTA). Conservation measures work to achieve mitigation (see Mitigation), specifically to avoid or minimize an impact, reduce the impact over time, or rectify or compensate for the impact. Conservation Measures are also referred to as Mitigation, Best Practices, and Best Management Practices.

Conservation Planning – strategic and tactical planning of agency activities for the long-term conservation of migratory birds and their habitats.

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

Drug Interdiction – is the interception of illegal drugs smuggled by air, sea, or land.

Ecological Condition – the composition, structure, and processes of ecosystems over time and space. This includes the diversity of plant and animal communities, the productive capacity of ecological systems and species diversity, ecosystem diversity, disturbance processes, soil productivity, water quality and quantity, and air quality. Often referred to in terms of ecosystem health, which is the degree to which ecological factors and their interactions are reasonably complete and functioning for continued resilience, productivity, and renewal of the ecosystem.

Effect (adverse or beneficial) – The biological consequences of an impact or the implementation of a conservation measure. Effects can be adverse (habitat avoidance) or beneficial (improved habitat quality). The effect is determined by the exposure of the bird or resource to the stressor/impact and the response to the impact. Effects may be direct, indirect, or cumulative, and refer to effects from actions or categories of actions on migratory birds, their populations and, habitats, ecological conditions, and significant bird conservation sites.

Exclusion Devices – any type of structural addition that prevents birds from entering or using a structure. Exclusion devices are used to reduce bird/structure conflicts. There are many types of exclusion devices. Coordinate with FWS to determine the proper device for the specific situation.

Federal On-Scene Coordinator (FOSC) – The FOSC is in charge of direct response efforts and coordinates all other efforts at the scene of a discharge or release. The FOSC is responsible for overseeing development of the ACP in the area of the FOSC's responsibility.

Impact – the combined result of an action/project, all of its associated activities and components, and the stressors (see below) produced by those actions.

Important Bird Areas (IBA) – a network of sites that provide essential habitat for the long-term conservation of birds. In the United States, the IBA network is administered by the American Bird Conservancy and the National Audubon Society. (<http://www.audubon.org/bird/iba/>).

Integrated Natural Resources Management Plan (INRMP) – an integrated plan based, to the maximum extent practicable, on ecosystem management that shows the interrelationships of individual components of natural resources management (e.g., fish and wildlife, forestry, land management, outdoor recreation) to military mission requirements and other land use activities affecting an installation's natural resources. INRMPs are required for all Department of Defense installations with significant natural resources, pursuant to the Sikes Act Improvement Act. U.S. USCG is not subject to the Sikes Act; thus, it is not required to develop an INRMP. However, INRMPs may be developed optionally. For example, the USCG Training Center Cape May, New Jersey developed an INRMP for the purpose of protecting migratory birds and their habitats (Piping Plover (*Charadrius melodus*) and Least Tern (*Sternula antillarum*) in particular). Another example of an optional INRMP being conducted by the USCG is the INRMP being

completed for Air Station Cape Cod that will address impacts to all migratory birds affected by our actions at the air station, especially impacts from airfield operations. For specific details see Appendix A.

Intentional Take – see Take

International Shorebird Survey – a monitoring program started in 1974 to survey shorebirds (sandpipers, plovers, etc.) across the Western Hemisphere. (<http://www.manomet.org/programs.shorebirds>).

Marine Event – an organized water event of limited duration which is conducted according to a prearranged schedule, often referred to as “regattas” or “marine parades”.

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

Military Readiness Activity – as defined in Pub. L. 107-314, § 315(f), 116 Stat. 2458 (Dec. 2, 2002) [Pub. L. § 319 (c)(1)], includes all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. It does not include (a) routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) operation of industrial activities, or (c) construction or demolition of facilities listed above.

Mitigation (see also Conservation Measures) - 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 1508.20, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act).

Monitoring Avian Productivity and Survivorship (MAPS) – a program that uses the banding of birds during the breeding season to track the changes and patterns in the number of young produced and the survivorship of adults and young. (<http://www.birdpop.org/maps.htm>).

National Environmental Policy Act (NEPA) – the law that requires Federal agencies to prepare a detailed analysis of the environmental impacts of their proposed action with alternatives and to include public involvement in the decision making process for major federal actions significantly affecting the quality of the human environment. 42 U.S.C. 4321-4347.

North American Bird Conservation Initiative (NABCI) – an initiative to align the avian

conservation community to implement bird conservation through regionally-based, biologically-driven, landscape-oriented partnerships across the North American continent. NABCI includes Federal agencies of Canada, Mexico and the United States, as well as most landbird, shorebird, waterbird, and waterfowl conservation initiatives. (<http://www.nabci-us.org>).

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>). The vision of the partnership is that the distribution, diversity and abundance of populations and breeding, migratory, and nonbreeding waterbirds are sustained throughout the lands and waters of North America, Central America, and the Caribbean.

North American Waterfowl Management Plan (NAWMP) – an international partnership of Federal, State, and Provincial 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>).

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 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, United States 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 (<http://www.fws.gov/migratorybirds>).

Stressor – any alteration or addition to the environment that affects birds and their resources.

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 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 MBTA. The regulations implementing 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

United States Marine Transportation System – encompasses a network of navigable waters,

publicly and privately owned vessels, port terminals, intermodal connections, shipyards, vessel repair facilities, and a trained labor pool operating and maintaining this infrastructure.

United States Maritime Domain – is defined as all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo and vessels and other conveyances.

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 ensure that stable and self-sustaining populations of all shorebird species are restored and protected. 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 Parties will consist of attempting to resolve the dispute with the USCG installation and the corresponding FWS office. 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 there is no resolution at this level, either Party may elevate the issue to the appropriate officials at the applicable USCG Chain of Command and the FWS Regional Offices. In the event that there is no resolution by these offices, the dispute may be elevated by either Party to the Headquarters 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:

1. This MOU in no way alters either Parties obligations or responsibilities under the authorities listed in Section B of this MOU or any other statute or other legal authority.
2. This MOU takes effect upon the signature of the USCG and FWS and shall remain in effect for five years from the date of execution. This MOU may be revised for non-substantive and or minor changes or corrections (e.g., misspellings, incorrect references, corrections/updates to USCG or FWS offices or programs titles, updating of principle points of contact, inclusion of new appendices that are already required by or referenced in the MOU, and additions and changes to Appendix A) upon an email request by the principle point of contact representing either Party and a subsequent email indicating concurrence of the other principle point of contact. This MOU may be extended, or amended for substantive changes upon written (e.g., memo) request of either Party or the subsequent written (e.g., memo) concurrence of the other Party. 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. This MOU in no way restricts

providing the other Party 30-days written notice to that effect. This MOU in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.

3. 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.
4. This MOU is neither a fiscal nor a funds obligation document. The Parties will handle any endeavor involving reimbursement, contribution of funds, or other 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 and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. No provisions of this MOU shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. §1341.
5. Press releases prepared by either Party that reference this MOU, or the relationship established between the Parties of this MOU, must have prior approval of both Parties.
6. The Parties shall schedule periodic meetings to review progress and identify opportunities for advancing the principles of this MOU.
7. This MOU in no way alters or takes the place of the respective Parties' obligations to comply with applicable requirements pursuant to NEPA, MBTA, ESA, CZMA or other applicable statutes or legal authority.
8. The responsibilities established by this MOU may be incorporated into existing USCG actions; however, USCG may not be able to implement some responsibilities identified in the MOU until USCG has successfully included them in formal planning processes. This MOU does not require changes to current contracts, permits, or other third-party agreements, until such time as the USCG has successfully included them in formal planning processes. This MOU is intended to be implemented when new actions are initiated as well as during the initiation of revisions to, or development of a new USCG NEPA Policy Manual, USCG Natural Resources Management Manual, CZMA Manual, or USCG's "Beneficial Landscaping Guidance." It does not apply to ongoing USCG actions for which a NEPA decision document was finalized prior to, or within 180 days of the date this MOU was signed.
9. 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.

The principal contacts for this MOU are as follows:

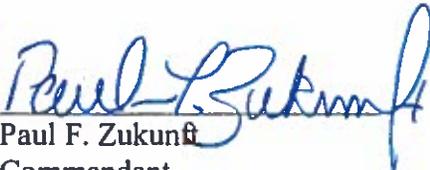
Mr. Brad Bortner
Division of Migratory Bird Management
U.S. Fish and Wildlife Service
U.S. Department of the Interior
4401 N. Fairfax Drive, MS 4107
Arlington, VA 22203

Mr. Edward Wandelt
Chief, Office of Environmental
Management Division (CG-47)
U.S. Coast Guard
2100 2nd Street, SW Stop 7901
Washington, DC 20593-7901

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


Daniel M. Ashe
Director
U. S. Fish and Wildlife Service

Date: 12/12/14


Paul F. Zukunft
Commandant
U.S. Coast Guard

Date: 9 JUNE 2014

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COAST GUARD
AND THE
U.S. FISH AND WILDLIFE SERVICE
Regarding Implementation of Executive Order 13186: “Responsibilities
of Federal Agencies to Protect Migratory Birds”**

**APPENDIX A: USCG Actions to Ensure its Operations are Protective of
Migratory Birds**

As mentioned in Section D of the MOU, the USCG acts bilaterally in the sense that it enforces environmental laws and regulations at the same time it ensures its own compliance with these laws as it conducts its missions, activities and operations. And as discussed in Section C of this MOU, the USCG carries out many missions that have direct and indirect benefits to migratory birds and their habitat; however, USCG operations necessary to carry out these missions, may also have the potential to negatively impact migratory birds. The USCG recognizes the importance of ensuring that the operations necessary to carry out its vital missions are compliant with MBTA requirements and as protective of migratory birds as possible. The additional programs, plans, agreements, policies, guidance, training initiatives, and projects and actions, implemented by the USCG to sustain the ecological integrity and conservation of migratory birds, above and beyond the implementation of its 11 mandated missions are as follows:

1. Programs

- a. **Atlantic Protected Living Marine Resources Initiative (APLMRI)** –In the 1996 USCG APLMRI Environmental Impact Statement (EIS), the USCG analyzed alternatives for adopting a set of measures to improve its ability to conserve and sustain protected living marine resources during all operations on the Atlantic Coast. The EIS resulted in a Record of Decision dated December 9, 1996, that committed the USCG to the APLMRI program which among other initiatives included measures to benefit protected Atlantic coastal and marine birds. Specifically, it committed the USCG to the following: avoidance, if possible, of flocks of marine birds resting on the sea surface and if approach is necessary, adjust speed to avoid impacts, modifying the USCG Air Operations Manual to require flying at 2000 feet over wildlife habitat with the expectation that at this altitude, harassment of birds was expected to be negligible, increasing USCG liaison with local authorities regarding the locations of protected bird nesting and foraging sites, and information on sensitive species and habitat so that the information would be up-to-date, centrally located and easily accessed by aircraft operators, requiring vessels to give a wide berth to wildlife nesting and rookery areas, particularly when birds and wildlife are present as part of vessel operational guidelines.

- b. **Final Environmental Impact Statement of the USCG's Pacific Area Operations (PACOPS EIS) Districts 11 and 13, April 2010 and Record of Decision.** Similar to the APLMRI EIS the PACOPS EIS analyzed the effect of USCG operations off the coast of California, Washington, and Oregon. The purpose of the EIS was to assist the USCG in the process of deciding the appropriate methods that the USCG could use to improve the protection and conservation of marine protected species (MPS) and marine protected areas (MPAs) while continuing to perform the USCG's missions within USCG District 11: California and District 13: Oregon and Washington. Biological resources considered in the PACOPS EIS include protected species and habitats such as marine mammals, sea turtles, coastal and marine birds, fish, and invertebrates; critical habitat; and essential fish habitat (EFH). USCG PACAREA protections for birds enumerated in this EIS are as follows: adopting Standard Operating Procedures (SOPs) that require vessels to give a wide berth to coastal nesting areas, prevention of unnecessary over-flight of sensitive environmental migratory habitat areas, plotting of environmentally sensitive areas on pilot's charts, and keeping to an altitude of 2000 feet except during emergency operations when flying over environmentally sensitive areas. The USCG preferred alternative committed to in the PACOPS ROD, committed to additional protective measures for west coast marine protected species in the following three areas: 1) Implementation of Improved Local Operating Procedures, Revised Guidance, and Enhanced Law Enforcement Operations, 2) Enhancement of In-House Marine Protected Species and Marine Protected Area Training, and 3) Enhancement of Partnerships to Facilitate Marine Protected Species and Marine Protected Areas Outreach and Conservation Distribution. Specific measures related to these three areas of protection are enumerated in detail in the EIS.
- c. **Aids to Navigation (ATON) and Analysis of Lighting Related to Minor Aids and Potential Impacts to Birds.** In December 2009 through September 2010, the USCG coordinated with the FWS Headquarters' Division of Migratory Bird Management to determine if the use of LED lights in our minor ATON (the USCG maintains 50,000 minor ATON) had the potential for adverse impacts to migratory birds. The USCG also coordinated with two well-known bird experts regarding the use of LEDs in our minor aids and possible effects of these lights on birds. After this coordination, the USCG concluded that due to the low intensity and flashing characteristic of the LED lights in minor aids, there was no potential for adverse impacts on migratory birds. The FWS and the bird experts concurred with the USCG conclusions.

2. Plans

- a. **Ocean Steward: Protected Living Marine Resources Strategic Plan.** The purpose of Ocean Steward is to help the USCG achieve its strategic goal of Protection of Natural Resources and its performance goal of enforcing federal regulations that result in all living marine resources achieving healthy, sustainable populations. Ocean Steward provides a clearly defined strategy for our role in helping the nation recover and maintain healthy populations of marine protected species (includes protected birds); it captures the things we are already doing and provides a comprehensive list of objectives we can

achieve if we are provided the necessary resources.

- b. **Cape May Integrated Natural Resources Management Plan (INRMP)** – The USCG Training Center in Cape May, New Jersey established the first USCG Integrated Natural Resources Management Plan (INRMP). The USCG is not required by the Sikes Act to develop INRMPs for its facilities; however, the USCG decided to develop an INRMP for one of its facilities, Training Center Cape May, to ensure conservation of its Piping Plover and Least Tern populations and their habitats. Least Terns are listed as endangered and Piping Plovers are listed as threatened; both species are considered migratory birds.
- c. **The USCG Air Station Cape Cod (ASCC) Natural Resources Management Plan** – The USCG is developing a Natural Resources Management Plan (NRMP) for the ASCC that is expected to be completed by June 2014. Due to the presence of an active airfield on ASCC, the management of wildlife hazards is critical. The USCG has a significant responsibility for complying with the MBTA as a result of strikes to protected bird species that result from aircraft use at ASCC. No single solution to wildlife hazards exists and a variety of techniques and organizations must be involved in the program. One of the goals of the NRMP is to identify activities that may cause impacts to migratory birds and develop recommendations for minimizing these impacts.

Uncertainty remains within the scientific community with respect to knowing the best solutions for avoiding the impacts of airfield management activities and operations on bird populations. To help facilitate and improve airfield grassland management on ASCC, a key goal of the NRMP will be to conduct site-specific surveys of local populations, risks, and interactions over the next five years. The USCG will utilize that baseline data to study the effects of different management regimes on bird populations. If new research or site specific-data provides support for modified operations such as alternative mowing regimes or prescribed burning that benefit both wildlife and flight safety, the USCG will take these findings into consideration and implement modifications.

3. Agreements

- a. **Rescue 21 Memorandum of Understanding between USCG and FWS (known as Parties)** – Signed by both the USCG, on May 22, 2003, and the FWS on April 7, 2003, the MOU is the first one signed by FWS with a Federal agency under Executive Order 13186. While the MOU is now expired, its requirements have been met, and it is an example of the early commitment of the USCG to EO 13186. The Rescue 21 Project is designed to update the Nation's maritime search and rescue "911" system that forms the backbone of the USCG's Short Range Communication System. The MOU between the USCG Assistant Commandant for Acquisitions and the FWS addressed the USCG's National Distress and Response System Modernization Project (NDRSMP) – now known as Rescue 21. The purpose of this MOU was to establish procedures and policies to be employed by the USCG and the FWS to monitor, assess, and reduce avian mortalities at USCG search and rescue broadcast telecommunications towers along the U.S. coastline

and Great Lakes. This MOU was implemented by USCG's Assistant Commandant for Acquisition (CG-A), his Rescue 21 Program Office (G-AND), and the FWS and was intended to strengthen migratory bird conservation. (Please see attached copy of this early USCG MOU – Appendix C).

4. Projects

- a. **LORAN-C Towers Decommissioning**– LORAN is a radio-navigation system first developed in World War II and operated by the USCG. The LORAN-C signal can be used for navigation, location, and timing services for civilian and military air, land, and marine users. USCG has worked with DHS and other agencies (FAA, FWS, etc.) to decommission the LORAN-C Program and to demolish the LORAN-C towers. LORAN-C transmitter towers have heights of approximately 630 feet to 4100 feet and have guy wires, characteristics that are normally associated with high avian mortality. In 2010, the LORAN-C Program was decommissioned and the North American LORAN-C signal was terminated. All the LORAN-C towers in Alaska have been dropped down or demolished. The USCG will continue to program the demolition of other LORAN-C towers in its infrastructure program, to the extent practicable. Though the purpose of dropping or demolishing the towers is for safety reasons, the action is also beneficial to conservation of migratory birds.
- b. **The Nationwide Automatic Information System (NAIS)** is a program that enables the USCG to identify, track and communicate with marine vessels using the Automatic Identification System (AIS), a maritime digital communication system that continually transmits and receives vessel data over very high frequencies. The USCG, to the extent practicable, implements guidelines and best practices established in the FWS Guidance on the Siting, Construction, Operation and Decommissioning of Communication Towers to protect migratory birds. NAIS is avoiding the building of new towers by co-locating their communication equipment on existing towers. In phase I of the NAIS system to avoid damage to natural habitat and harm to migratory birds, NAIS co-located all its equipment on existing towers. Phase II of NAIS will occur once USCG Rescue 21 towers are complete at which time NAIS will attempt to co-locate all other NAIS communication equipment on the Rescue 21 towers. Phase III will assess any gaps in the NAIS tower system to see if additional towers are needed that cannot be co-located. If new towers need to be built, they will adhere to the FWS Guidance on the Siting, Construction, Operation and Decommissioning of Communication Towers to greatest extent possible.
- c. **Golden Crownbeard (*Verbesina encelioides*) control on Kure Atoll for nesting Albatross.** The State of Hawai'i and the Kure Atoll Conservancy are involved in an active project to rid Kure of the invasive weed Golden Crownbeard so that it will offer habitat for nesting albatross and other seabirds. The weed overwhelms albatross nesting areas and grows so quickly that it can even prevent albatross chicks from fledging. During the summer of 2011, USCG staff from the NESU Honolulu Industrial shop along with personnel from the Hawaii Department of Land and Natural Resources with the assistance of the USCGC KUKUI (which transported the supplies) built a bunkhouse on

Kure. The bunkhouse was built so that DLNR personnel could live there year-round, which is the only way to successfully control the growth and spread of Golden Crownbeard. The site where the DLNR bunkhouse sits was once the USCG LORAN Station Kure whose construction and operation is suspected to have contributed to the widespread infestation of Golden Crownbeard on Kure. Areas that have been cleared of *Verbesina* now have extensive nesting of Laysan (*Phoebastria immutabilis*) and Blackfoot Albatrosses (*Phoebastria nigripes*), as well as Christmas (*Puffinus nativitatis*) and Wedge-tailed Shearwaters (*Puffinus pacificus*).

5. Partnerships

- a. **USCG Academy Partnership Projects.** The USCG Academy's Cadet Sustainability Club is a cadet-run and oriented organization founded in 2006 by cadets. Its mission is to serve as an organized means of directing the Corps of Cadet's recycling and sustainable activities as well as to serve as a liaison for sustainable activities throughout the Academy and beyond. The Club welcomes the opportunity to assist with stewardship efforts involving imperiled and endangered species. USCGA Club participated in partnership programs with other agencies working for the conservation of migratory birds and preservation and enhancement of their habitats:
 - 1). **For the Piping Plover.** "Milford Point" is part of the Stewart B. McKinney National Wildlife Refuge (NWR) and includes a barrier beach which is potentially good habitat for Piping Plovers. The USCG Academy's Sustainability Club recruited other cadets, and staff and partnered with students from Connecticut College to assist FWS personnel with the cleanup of trash and debris at Milford Point in order to protect potential habitat for Piping Plovers. Piping Plovers are threatened mostly due to habitat loss.
 - 2). **For the Roseate Tern (*Sterna dougalli*)** – The FWS Stewart B. McKinney National Wildlife Refuge (NWR) encompasses 10 different barrier beaches, tidal wetlands and island habitats along the shoreline of Connecticut. Storm Irene, destroyed all 200 special nesting boxes that were critical to the survival of the federally endangered bird, the Roseate Tern. Academy cadets and staff partnered with Connecticut Audubon, FWS personnel, and students from Connecticut College and New London Magnet School and built nesting boxes for the Roseate Tern. In all, 150 nesting boxes were completed and delivered to FWS staff.
 - 3). **For the Common Tern (*Sterna hirundo*)** -Seney NWR in Michigan and the USCG station at St. Ignace signed a cooperative agreement to manage a major Common Tern colony (>500 individuals most years, 455 nests in 2009) on a USCG mooring structure on the Straits of Mackinac in Lake Huron. This colony has grown to be the most important Common Tern colony in the Upper Great Lakes. An electrified fence to reduce predation by mink, domestic cats and other land-based predators is maintained during the tern breeding season. The Common Tern is a species of conservation concern in the Great Lakes. USFWS is responsible for reducing 30-50% of the vegetation in the colony with an approved herbicide outside the breeding

season. Routine station operations and activities do not appear to impact the nesting birds or nesting area.

4). Other partnership events completed with FWS-NWR Westbrook, CT are:

a) **In the Spring 2012, the Academy visited Faulkner Island to prepare it for migrating roseate terns** by eliminating hiding spots for predators, cleaning up litter, pulling weeds, and helping with sand replacement.

b) **USCG Cadet Sustainability Club also co-sponsors the New London Environmental Educators Coalition “Sound Communities.”** A keynote speaker from the USCG headquarters addressed environmental issues affecting Long Island Sound. FWS representatives were also present and were available to talk about threatened and endangered species, including migratory birds that make Long Island Sound their home.

c) **Tern boxes.** USCG cadets, together with Connecticut College students and Boy Scouts from New Haven/Milford area spent a weekend in the Spring of 2012 placing the 200 tern boxes at Faulkner Island and doing some last-minute weed removal and beach prep in anticipation of the return of the migratory birds.

5). The USCG Academy Sustainability Club has a continuing partnership with the FWS, the Connecticut Audubon Society and students from Connecticut College and New London Magnet School and welcomes the opportunity to continue to work and assist in projects at Falkner Island and other components of the Stewart McKinney National Wildlife Refuge involving imperiled and endangered species and the conservation of migratory birds and the preservation and enhancement of their habitats.

6. Activities on USCG Facilities

- a. **USCG Training Center Cape May, New Jersey** – The USCG Training Center (TRACEN) Cape May, New Jersey is the Nation’s only USCG Recruit Training Center. TRACEN Cape May is located at the southern tip of Cape May County, New Jersey. The Installation comprises approximately 300 acres of land managed by the USCG. Its location at the southern tip of the Cape May Peninsula is ideally situated as a “jumping-off” point for migratory birds during spring and fall migrations. This geographical advantage combined with a large network of wetlands, mudflats, and beaches provide exceptional habitat for migratory birds. Thus, there is a high concentration of birds in this USCG property including its beaches. The beaches along the southern boundary of the Installation are designated nesting areas for Piping Plover and Least Tern. Due to the worst coastal erosion in the past 20 years, the beaches of USCG TRACEN Cape May have changed. In cooperation with the U.S. Corps of Engineers, City of Cape May, and the New Jersey Department of Environmental Protection, USCG conducted a project that pumped over 620,000 cubic yards of sand onto the TRACEN’s beach during the winter of 2011. While the project was specifically designed for shoreline stabilization, it also

has the dual benefit of providing essential breeding habitat for listed beach nesting birds, particularly, Piping Plovers and Least Terns.

- b. **USCG TRACEN CAPE MAY** - coordinates closely with the Endangered and Non-Game Species Program for the State of New Jersey on all its activities that could potentially impact birds. The TRACEN actively participates in the protection of migratory birds during nesting season for the endangered Piping Plover to include: nest location and monitoring, the construction of predator exclusion devices, predator control during off season, and annual reporting of nesting success or failure. TRACEN CAPEMAY provides similar protections (minus the predator exclusion devices) for the American Oystercatcher (*Haematopus palliatus*), not listed as endangered, but a species of concern. Also, TRACEN CAPEMAY shuts its beach down to all activities, except for monitoring and security patrols, during the nesting season. TRACEN Cape May announces the shutdown of the beach within its property to all activities thru publication in the local newspaper and by posting notices to the public by the public entrance to the access path leading to their beach. TRACEN CAPEMAY has also participated for the last two years in an acoustical survey for fall migrating birds. The TRACEN has an isolated site that allows for uninterrupted sound measurements. Basically, the equipment turns on at dusk and turns off at dawn recording nocturnal flight calls. The data is collected and processed through a program that identifies species and numbers. The TRACEN at Cape May has also been a test site for various technologies and techniques for the preservation of endangered species to include alternate feeding sites for Piping Plovers. Finally, the TRACEN conducted a comprehensive avian study post construction of their R21 Tower to evaluate bird strikes.
- c. **Beneficial Landscaping Projects – Multiple Facilities.** The Office of Environmental Management utilized our “Beneficial Landscaping Guidance” document to work with USCG stations, bases, and installations to encourage beneficial landscaping projects, including development of model programs in USCG Air Station San Diego CA, USCG Aviation Training Center Mobile, AL, and USCG Telecommunications and Information Systems Command, Alexandria VA. Other stations with beneficial landscaping projects were USCG Station Crisfield, Maryland, USCG Training Center Cape May, Cape May, New Jersey, Integrated Support Command, Portsmouth, VA, USCG Station Neah Bay, Neah Bay, Washington and USCG Communications Station Miami. Beneficial landscaping helps to create healthy habitat for migratory birds. These stations used some or all of the following landscaping methods: no or reduced mowing, creation of increased wooded areas by planting trees, use of native plants, integrated pest management, water conservation and xeriscapes, reduction of Greenhouse effects method, erosion control and flooding prevention method, energy reduction method, and rain garden method.

7. Policy Updates and Revisions Designed to Improve Compliance with Environmental Laws

- a. **Natural Resources Management, COMDTINST M5090.3 (series).** M5090.3 (series) is the USCG’s policy and procedures for Natural Resources Management. This policy is currently being rewritten to provide updated policy on compliance with Natural Resource

laws including ESA, MBTA, and the Eagle Act. This policy will also include a website for the list of migratory birds.

- b. **Coastal Zone Management Policy.** USCG has recently revised and updated its Commandant Instruction 16004.2 (series), Coastal Zone Management, Federal Consistency Procedures to provide better compliance with and understanding of USCG CZMA compliance responsibilities. CZMA compliance is important in the protection of important coastal habitat that benefits Federal trust species, including migratory birds.
- c. **National Environmental Policy Act (NEPA) Manual, COMDTINST M16475.1 (series), Implementing Procedures and Policy for Considering Environmental Impacts.** This USCG NEPA implementing policy establishes policy and prescribes responsibilities and procedures for USCG implementation of NEPA, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and DHS Environmental Planning and Historic Preservation Program Directive. A future planned revision will add specific guidance on MBTA and NEPA.
- d. **Commanding Officers Environmental Guide.** This Publication is a desktop guide to Federal environmental stewardship requirements for commanding officers and officers in charge of USCG shore units, vessels and aircraft. The document contains information on requirements to ensure environmental compliance at our units including guidance on migratory birds and the requirements of MBTA. The USCG is currently revising and updating this guide to reflect the newest procedures, policies, and mandates related to compliance with environmental laws.
- e. **Beneficial Landscaping Manual.** The USCG Headquarters Office of Environmental Management produced a USCG beneficial landscaping guide to provide information on how to landscape and maintain USCG property such that native plants would be used in landscaping, removal of invasive species would occur, and the creation of more natural areas maintained with less mowing needed, more natural pest control vice use of pesticides etc. The guide was designed to help create healthy natural environments at USCG facilities that would provide natural habitat for local wildlife and also increase aesthetics at USCG stations and lower costs of landscape maintenance.

8. Environmental Training Program

- a. **USCG sponsored nationwide NEPA training, 2011.** In 2011, USCG completed nationwide NEPA training for both operators and environmental specialists in the USCG. Three NEPA classes were taught: one at USCG headquarters, one on the east coast and one on the west coast. The USCG plans to train on NEPA nationwide every 2-3 years. NEPA is the main process utilized by the USCG to ensure compliance with all environmental laws including MBTA. Nationwide NEPA training will help ensure compliance with MBTA.
- b. **USCG sponsored nationwide ESA training 2011-2012.** The USCG just completed comprehensive ESA training nationwide in 2011-2012 for both operators and

environmental specialists in the USCG. The USCG held 5 ESA Section 7 classes: one at USCG Headquarters, one on each coast, one in Hawaii, and one in Alaska. Many ESA listed species are also migratory birds. We plan on training on ESA every 2-3 years. Periodic training on ESA Section 7 will help migratory birds by ensuring compliance with ESA. Originally, NMFS partnered with USCG and taught the Section 7 course; however, the USCG is currently developing a USCG specific ESA course for use in future in-house training.

- c. **USCG sponsored Nationwide MBTA and Eagle Act courses in 2013.** The USCG partnered with Headquarters FWS Division of Migratory Bird Management to develop an MBTA compliance training course to offer to USCG nationwide. The USCG-specific FWS-taught MBTA course was piloted at USCG Headquarters on March 26-28. The USCG also held the training in Miami, FL on July 30-August 1 and in Seattle, WA on August 12-14 for USCG operators and environmental staff. Training operators and environmental staff in MBTA will help ensure compliance with the laws that protect migratory birds. USCG plans to offer this course nationwide every 2-3 years.
- d. **NEPA Warrant Program.** The future NEPA Warrant Program, currently in development will require all USCG environmental staff that sign USCG NEPA documents as a primary or collateral duty to be trained in requirements of NEPA and all other associated environmental laws including MBTA. The NEPA Warrant is being developed to ensure that the knowledge, skills, and abilities of warranted USCG staff are maintained at the highest professional level.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COAST GUARD
AND THE
U.S. FISH AND WILDLIFE SERVICE**

**Regarding Implementation of Executive Order 13186: “Responsibilities
of Federal Agencies to Protect Migratory Birds”**

APPENDIX B: Common Avian Stressors & Their Related Threats and Consequences

Stressor	Threat	Consequence
Artificial light	Displacement Increased predation	Reduced productivity Reduced survival Local population declines
Artificial perches	Increased predation & parasitism	Reduced productivity Reduced survival
Chemical contamination (includes pesticide application)	Decreased food supply Ingestion Abnormal egg/chick development	Increased competition Inability to provision Reduced productivity Reduced health & survival Death
Human Disturbance (presence)	Displacement Increased predation and parasitism	Local population declines Reduced productivity Reduced survival Death
Invasive species introduction	Increased predation & parasitism Increased competition Change in vegetation structure Increase in disease	Reduced productivity Reduced survival Death
Noise	Decreased pairing success Displacement	Reduced productivity Reduced survival Local population declines
Structural additions to landscape	Barrier to movement Displacement Reduced gene flow Collisions	Local population declines Reduced pairing success Reduced genetic diversity Injury Death
Vegetation manipulation	Decreased structural complexity Increased predation & parasitism Displacement	Local population declines Reduced productivity Reduced survival
Vegetation removal	Resource loss Degradation in resource quality Fragmentation	Increased competition Reduced productivity Reduced survival Local population declines

**Memorandum of Understanding Between
The United States Coast Guard Assistant Commandant for Acquisitions
and
The United States Fish and Wildlife Service
Addressing the U.S. Coast Guard's National Distress and Response System
Modernization Project – Rescue 21
March 2003**

A. Statement of Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish procedures and policies to be employed by the United States Coast Guard (USCG) and the U.S. Fish and Wildlife Service (Service), hereinafter the Parties, to monitor, assess, and reduce avian mortalities at USCG search and rescue broadcast telecommunications towers along the U.S. coastline and Great Lakes. This MOU addresses site and structure-specific issues that may affect migratory birds. The MOU is to be implemented between the USCG's Assistant Commandant for Acquisition (G-A), his Rescue 21 Program Office (G-AND), and the Service, and is intended to strengthen migratory bird conservation.

Specifically, this MOU will implement strategies to minimize the take of migratory birds that may result from the siting, construction, and operation of the National Distress and Response System Modernization Project (NDRSMP), now known as Rescue 21, on USCG property during the period of this MOU. Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds (66 FR 3853, January 17, 2001) (<http://migratorybirds.fws.gov/EO/migrbrdep.html>), directs Federal agencies whose activities have or are likely to have a measurable, negative effect on migratory bird populations to develop and implement an MOU with the Service that will promote the conservation of migratory bird populations. Specifically, the provisions of this MOU will cover USCG and Service obligations with regard to Rescue 21 and will be incorporated by reference in any future MOUs that may be signed in accordance with this Executive Order. It is the intent of the signatories to this MOU that this shall be a cooperative, non-adversarial endeavor, and all Parties enter into this agreement with the intent to undertake reasonable steps to facilitate its successful execution. The goal of the Parties is to minimize the take of migratory birds incidental to the siting, construction, and operation of USCG Rescue 21 towers through research and testing opportunities. The application of the results of that research will be used to further reduce or eliminate take of migratory birds incidental to future tower siting, construction and operation.

B. Background and Intent

The National Distress and Response System (NDRS) is the nation's maritime search and rescue "911" system and forms the backbone of the USCG's Short Range Communication System. The NDRS incorporates the use of very high frequency-frequency modulation

(VHF-FM) radios to provide two-way voice communications coverage for the majority of USCG missions in coastal areas and navigable waterways where commercial and recreational traffic exists. The current system, consisting of approximately 300 remotely-controlled VHF radios and antenna remote fixed facility sites, was originally built to monitor international VHF-FM distress signals, coordinate search and rescue operations, and communicate with commercial and recreational vessels. The current system is technologically outdated. There are over 65 verified gaps and numerous localized coverage deficiencies. The USCG will modernize the current system by installing a state-of-the-art, dual mode VHF/ultra high frequency telecommunications system and deploy it at existing antenna tower sites, at leased space on existing commercial tower sites, or at new antenna tower sites. To minimize environmental impact and cost resulting from the deployment of Rescue 21, the USCG will collocate antenna equipment on existing communication towers or other structures by leasing space from an industry provider, to the maximum extent practicable, without affecting the mission needs and system requirements (*e.g.*, schedule, cost, performance) of Rescue 21.

C. Authorities

USCG participation in this MOU is authorized by 14 U.S.C. §141, U.S. Coast Guard, entitled, "Cooperation with other agencies, states, territories, and political subdivisions" and Executive Order 13186. The Service enters into this MOU in furtherance of the provisions of the Migratory Bird Treaty Act (16 U.S.C. §§ 703-711), Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668d), Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c), National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1544), and the Clean Water Act (33 U.S.C. §§ 1251-1387).

D. Terms and Conditions

This MOU will take effect immediately upon signature of both Parties, and will remain effective for 5 years, after which it may be renewed, amended, or allowed to expire. Either party may terminate the MOU by giving 30 days written notice. Any changes, modifications, and amendments must be agreed to in writing by both Parties.

This instrument in no way restricts either party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.

The reimbursement, contribution of funds, or 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.

Any press release prepared by the Service or USCG that references this MOU, or the relationship established between the Parties of this MOU, shall be provided in draft to the other agency for its review before it can be issued.

E. Definitions

For the purposes of this MOU, the following terms have these meanings:

“USCG G-A” means the Assistant Commandant for Acquisitions, the United States Coast Guard.

“USCG G-AND” means the USCG, Office of Acquisitions, National Distress Program.

“USCG property” means owned or leased real property directly under and within the right-of-way of USCG facilities, owned and operated by the USCG.

“USCG equipment” means radio, antenna and tower equipment owned or leased by the USCG.

“NDRSMP or Rescue 21 towers and associated structures” means any USCG facilities and USCG property that are being constructed by and/or used for Rescue 21.

“Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of Rescue 21 communications.

“Migratory birds” means the list of avian species identified in 50 CFR Part 10.13 and also includes in the definition under 50 CFR Part 10.12, “...any part, nest, or egg.”

“Avian Protection Plan” and “APP” mean a comprehensive, professionally designed, managed, and implemented program. The APP will include a research protocol for pilot studies to be developed and implemented at a select number of USCG Rescue 21 communications towers. The Plan will evaluate threats posed to migratory birds by the new deployment of USCG’s Rescue 21 property and facilities, and will establish measures to minimize or eliminate threats including application of the Service’s voluntary tower siting and placement guidance, and use of the Service’s voluntary tower site evaluation form (*Service Interim Guidelines for Recommendations on Communications Tower Siting, Construction, Operation, and Decommission*; <http://birds.fws.gov/management.htm>; avian mortality; tower kills), to the maximum extent practicable. The APP will apply to all newly constructed USCG Rescue 21 communication towers but will have guidance for retrieval of dead and injured birds and removal of nests also applicable to collocations not under USCG ownership or authority.

“Migratory Bird Special Purpose Permits” mean permits described in 50 CFR Part 21.27, which can authorize salvage, possession, and transport of migratory birds, their nests, eggs, and parts.

“Species of concern” refers to those species listed in the periodic report *Birds of Conservation Concern* published by the Service’s Division of Migratory Bird Management

(migratorybirds.fws.gov/reports/BCC2002.pdf) – most recently updated in February 2003, and priority migratory bird species documented in the comprehensive bird conservation plans, native game bird species of concern, stewardship species, and federally listed threatened and endangered bird species.

“Take” as applicable to this MOU and as defined in 50 CFR Part 10.12, means to “pursue, hunt, shoot, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, trap, capture, or collect.”

F. Agreement

This MOU focuses on new antenna tower sites that will be constructed on USCG property to support Rescue 21. In consideration of these premises, the Parties, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions, agree as follows:

1. The USCG (G-AND) Will:

Comply with all necessary provisions of the National Environmental Policy Act of 1969 (NEPA), as well as provisions pertinent to the Clean Water Act (specifically Section 401, 402, and 404), the Endangered Species Act (Section 7), and any other pertinent Federal environmental review processes, in addition to any site-specific comments in the environmental review process above. The USCG will complete a Categorical Exclusion, or an Environmental Assessment, or an Environmental Impact Statement dependent on the deployment alternative taken at individual construction locations. The USCG will provide the Service a copy of their NEPA document during applicable comment periods. In accordance with Executive Order 13186, the environmental review process will evaluate the effects of actions on migratory birds, with emphasis on species of concern.

To the maximum extent practicable and where collocation is not feasible, construct new tower sites to meet the mission needs and system requirements, using the Service’s 2000 voluntary communication tower siting and placement guidance (cited above).

To initiate the review process with the Service, G-AND will contact the Service’s Ecological Services field office nearest the area where the research tower is to be located. The USCG will submit a tower site evaluation form to the appropriate Ecological Services field office for its review and comment for any new antenna towers to be constructed.

In cooperation with the Service, jointly create an avian protection plan (APP). As part of the APP, establish a protocol for implementing avian-tower research at newly constructed USCG Rescue 21 towers. The avian protection plan, to be developed for all newly constructed USCG Rescue 21 towers, but with specific guidance that will be applicable to all towers including collocations (e.g. procedures for collecting, transporting and disposing of dead and injured birds; and destruction of migratory bird and eagle nests) will be designed by a

contractor selected by USCG (G-AND) in coordination with a representative from the Service using principles generally accepted by the avian research community and the telecommunications industry.

Develop and implement pilot research studies at select new USCG Rescue 21 telecommunications sites.

Submit to the Service an application for a Migratory Bird Special Purpose Permit (SPP; 50 CFR Part 21.27) to salvage, transport and temporarily possess migratory birds, their parts, nests, or eggs for the purpose of conducting research at select new USCG Rescue 21 antenna sites. Applications will be submitted to the Migratory Bird Permit Office in the Service Region where the research tower is located. If the USCG (G-AND) has been issued a migratory bird permit prior to execution of this MOU, USCG will contact the issuing office to initiate review of the provisions and conditions of such permits to ensure that their terms provide for compliance under this MOU.

As a condition of the SPP, the USCG or its designee will maintain records of activities conducted under the permit, including but not limited to, species and numbers salvaged, date collected, location, and disposition.

Upon request, allow the Service or its designees access during research efforts to document avian mortalities and injuries, monitor bird behavior around towers, assess lighting impacts on migratory birds, and for related research purposes at manned USCG property. Some access may be restricted for personnel safety reasons and research techniques restricted to those that do not negatively affect the Rescue 21 mission. Nothing in this section limits the authorization of a Service law enforcement officer to access USCG sites while in the performance of his/her duties.

2. The Service Will:

Deem the USCG (G-AND) to be sincere in its efforts to pro-actively protect migratory birds while the USCG (G-AND) is a party to this MOU.

Recognize that some birds may be killed at USCG Rescue 21 tower structures even if all reasonable measures to avoid such take have been implemented.

To the extent possible, process a complete application for an SPP within 30 days of receipt by the issuing office. The SPP will authorize, but not require, the USCG to salvage, transport, and temporarily possess at select research tower sites carcasses of migratory birds, including eagles, according to the terms of the permit(s). Applications will be submitted to the Migratory Bird Permit Office where the research tower is located (see address above).

Work collaboratively with USCG (G-AND) to develop a research protocol for pilot research studies by providing available technical information and support to USCG (G-AND). In

addition, the Service will share the latest resource information pertaining to communication towers with the USCG (G-AND) to assist in the conservation and management of migratory birds.

Report to the USCG (G-AND) any birds found dead or injured at USCG Rescue 21 tower structures that are reported to the Service within five (5) working days of such notification or reporting, where feasible. The report will include the location of take, including proximity to and description of the newly constructed USCG (G-AND) telecommunications facility, apparent species of dead bird(s), and details of carcass discovery, where known.

G. Enforcement Responsibility of the Service

This MOU is not intended nor construed to limit or preclude the Service from exercising its authority under any law, statute or regulation, including the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and the Endangered Species Act, to take enforcement action against the USCG, or to relieve the USCG of its obligations to comply with any applicable Federal, State, or local laws, statutes, or regulations.

The MBTA is the cornerstone of migratory bird conservation and protection in the United States. The MBTA implements four treaties that provide for international protection of migratory birds. It is a strict liability statute wherein proof of intent is not an element of a taking violation.

The unauthorized take or possession (permanent or temporary) of a protected species is a violation. Specifically, the MBTA states:

“Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for transportation, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.”

While the MBTA and the BGEPA have no provision for allowing unauthorized take, the Service realizes that some birds may be killed incidental to the siting, construction and operation of USCG Rescue 21 towers even if all reasonable measures to avoid the take are implemented. The Service's Office of Law Enforcement carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals, companies, industries, and agencies that seek to eliminate their impacts on migratory birds. Unless an activity is authorized by permit or regulation, it is not

possible to absolve individuals, companies, industries or agencies from liability even if they implement avian mortality avoidance or similar conservation measures.

However, the Office of Law Enforcement focuses on those individuals, companies, industries, and agencies that take migratory birds with disregard for their actions and the law, especially when conservation measures are available but are not properly implemented or followed.

H. Dispute Resolution

The following procedures shall be utilized to elevate any conflict or disagreement between the Parties. In any elevation, the Parties will jointly prepare an elevation document that will contain a joint statement of facts and succinctly state each Party's position and recommendations for resolution. If the Parties are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process.

Level 1: The Level 1 review team consists of staff personnel from USCG and the Service. Any contentious issues will be discussed with an attempt to resolve them without elevation. If disputes cannot be resolved among the Level 1 team members, the issue will be raised with the Level 2 review team as soon as possible.

Level 2: The Level 2 review team consists of the Assistant Commandant for Acquisitions for the U.S. Coast Guard and the Assistant Director, Migratory Bird and State Programs for the Service, or their successors. The Level 2 team will make their best efforts to resolve any issues elevated to them. Where resolution is not possible at this level, the Level 2 team will elevate the issue to Headquarters Review no later than 14 days after notification by the Level 2 team, or sooner as agreed upon or mandatory deadlines require.

Headquarters Review: This review consists of the Service's Director, and the Commandant, USCG, or their representatives, who shall attempt to resolve disputes elevated by the signatories. Headquarters Review officials shall attempt to issue a decision resolving the dispute within 21 days after elevation. Decisions shall be binding upon the Parties' field staffs. At this resolution level, the decision must rest with the Party exercising the statutory or regulatory authority in question.

By way of example, if the Parties cannot agree on a specific issue of fact or interpretation of law, the working level staff will first try to resolve the matter (orally, in writing, or both) using whatever means they mutually deem appropriate. If after a reasonable period of time, the matter is unresolved, the Parties must inform the Assistant Commandant of the Coast Guard and the Assistant Director, Migratory Bird and State Programs. These Parties may use any means they choose to reach a mutually acceptable resolution to this matter. If they are not able to resolve the matter within 14 days, it will be elevated to the Commandant of the Coast Guard and the Director of the Service or their representatives. If the Headquarters

review does not resolve the matter within 21 days, the issue will be resolved outside the provisions of this MOU.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

I. The Parties Hereto have executed this agreement as of the last date shown below:



/s/ C.D. Wurster, RADM
Assistant Commandant for Acquisitions
U.S. Coast Guard

5/22/03

Date



/s/ Steven A. Williams, Director
U.S. Fish and Wildlife Service

4/7/03

Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COAST GUARD
AND THE
U.S. FISH AND WILDLIFE SERVICE**

**Regarding Implementation of Executive Order 13186: "Responsibilities
of Federal Agencies to Protect Migratory Birds"**

**APPENDIX D: Directory for Contact Information for Headquarters and
Regional US Fish and Wildlife Service Migratory Bird and Ecological
Services Offices.**

USFWS Region	States Covered	Migratory Bird Office	Migratory Bird Permits	Endangered Species
Headquarters		703-358-1714	703-358-1825	703-358-2171
Region 1	Hawaii Idaho Oregon Washington	503-231-6164	503-872-2715	503-231-6151
Region 2	Arizona New Mexico Oklahoma Texas	505-248-6875	505-248-7882	505-248-6920
Region 3	Illinois Indiana Iowa Michigan Minnesota Missouri Ohio Wisconsin	612-713-5473	612-713-5436	612-713-5350
Region 4	Alabama Arkansas Florida Georgia Kentucky Louisiana Mississippi North Carolina South Carolina Tennessee	404-679-7070	404-679-7070	404-679-7140

Region 5	Connecticut Delaware Maine Maryland Massachusetts New Hampshire New Jersey New York Pennsylvania Rhode Island Vermont Virginia West Virginia	413-253-8643	413-253-8643	413-253-8304
Region 6	Colorado Kansas Montana Nebraska North Dakota South Dakota Utah Wyoming	303-236-4409	303-236-8171	303-236-4252
Region 7	Alaska	800-368-8890	907-786-3693	907-786-3856
Region 8	California Nevada	916-414-6464	916-414-6464	916-414-6464