MEMORANDUM OF UNDERSTANDING (MOU)

ON THE CO-MANAGEMENT OF CERTAIN PROGRAMS

between the

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

and

U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

ON MATTAMUSKEET NATIONAL WILDLIFE REFUGE

I. Purpose:

This MOU is intended to enhance management of and communication concerning Mattamuskeet National Wildlife Refuge (NWR), a unit of the National Wildlife Refuge System (NWRS), by defining co-management responsibilities and enriching the existing partnership between the North Carolina Wildlife Resources Commission (NCWRC) and the U.S. Fish and Wildlife Service (USFWS). The current condition of Lake Mattamuskeet and the health of the associated fish and wildlife populations are in question at this time and of great interest to both agencies and the public. Increased collaboration between agencies provides priority attention and support to address the ecological issues and challenges to improve the health of the lake and manage wildlife populations. A Memorandum of Collaboration between agencies dated December 2014 provides a structure (three-tiered team approach) for actions that this MOU further defines.

II. Background:

NCWRC and USFWS have a history of working together on many programs and projects with positive outcomes for fish and wildlife resources. Through collaborative efforts, resources from each agency can be leveraged more effectively to implement landscape scale management for sustaining wildlife populations and providing appropriate and compatible outdoor recreational and educational opportunities on refuges.

We recognize that even with great commonality among our conservation missions, there are differences in legal obligations, policies, funding sources, and expectations. We acknowledge one another's strengths and appreciate each other's differences.

The NCWRC is charged with stewardship of the State trust wildlife resources of North Carolina which belong to the people of the State as a whole in accordance with the following:

… to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and freshwater fishes, and other wildlife resources enacted by the General Assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program … (North Carolina § 143-239, 1947)

The mission of the NCWRC is:

... to conserve North Carolina's wildlife resources and their habitats and provide programs and opportunities that allow hunters, anglers, boaters and other outdoor enthusiasts to enjoy wildlife-associated recreation.

The purpose of Mattamuskeet NWR is to protect and conserve migratory birds and other wildlife resources through the protection of wetlands, in accordance with the following:

... as a refuge and breeding ground for birds and wild animals, and (2) that such portion as the Secretary of Agriculture [Interior] may deem proper be reserved for use as a shooting area, to be operated under a cooperative agreement or lease .... With regard to the waters ... the Secretary of Agriculture [Interior] ... may enter into a cooperative agreement or lease ... said waters may be used for fishing purposes ... (Executive Order 6924, dated Dec. 18, 1934)

... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. 16 U.S.C. § 715d (Migratory Bird Conservation Act of 1929)

... for the development, advancement, management, conservation, and protection of fish and wildlife resources ... 16 U.S.C. §742f(a)(4) ... for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ... 16 U.S.C. § 742f(b)(1) (Fish and Wildlife Act of 1956)

Though Congress is clear in its direction through the National Wildlife Refuge System Improvement Act of 1997 that the NWRS mission is subservient to an individual purpose of a national wildlife refuge, it is important to consider the NWRS mission and the mission of the USFWS overall in setting the appropriate context for this partnership:

The mission of the NWRS is:

... to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

The mission of the USFWS is:

... to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.

III. Authority

This MOU is entered into under the authorities vested to both agencies.

Specifically to the USFWS under the authority of the Migratory Bird Conservation Act of 1929, Fish and Wildlife Act of 1956, Refuge Recreation Act of 1962, National Wildlife Refuge System Administration Act of 1966, and ultimately the National Wildlife Refuge System Improvement Act of 1997. Though laws direct that final decision making authority rests with the USFWS for refuge management, we are pleased that the Act of 1997 also directs that the USFWS is to:

... ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;

... ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges;

... nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

Specifically to the NCWRC under the authority of North Carolina § 143-239 (1947) which enables the NCWRC to enter into cooperative agreements:

...the Commission is hereby authorized and empowered to enter into cooperative agreements pertaining to the management and development of the wildlife resources with federal, State, and other agencies, or governmental subdivisions.

It is understood and agreed that each party operates under its own legal authorities, policies and administration, and each party's obligations under this MOU are thereby limited.

IV. Coordination:

The USFWS and NCWRC collectively have several complementary responsibilities and will seek opportunities to collaborate on the management of Mattamuskeet NWR, nearby state lands, and other partner lands in the landscape surrounding Mattamuskeet in eastern North Carolina. It is therefore advantageous for these agencies to join together in this MOU to enhance cooperation to achieve common goals and objectives.

V. Scope of Effort:

For a period as hereinafter set forth, the USFWS and NCWRC shall collaborate on the management of Lake Mattamuskeet NWR and obtain input from relevant stakeholders as needed for the performance of work as set forth below. More detailed information will be updated no less than annually in an annual work plan.

Responsibilities of NCWRC:

A. Participate per the 2014 Collaboration Memorandum between USFWS and NCWRC to support management of Mattamuskeet NWR.

B. Support research, habitat restoration, and public use enhancement projects.

C. To provide public hunting and fishing opportunities on behalf of the Service, consistent with refuge purpose and NWRS overall management responsibilities and mandates, to include the following: hunt permit process and producing annual hunting and fishing brochures; conduct hunting and fishing outreach, especially to promote hunter recruitment and retention; manage public access and check stations, maintain docks, boat ramps, and fishing piers on Lake Mattamuskeet; and fisheries management. This program management, including proposed seasonal bag and creel limits; time and location of access, including off highway vehicle use on designated roads and trails, will be consistent with the Comprehensive Conservation Plan and Refuge Hunting and Fishing Plans, the latter to be approved by both agencies. The Refuge Hunting and Fishing Plans will enable Mattamuskeet NWR to comply with required Compatibility Determinations, National Environmental Policy Act (NEPA) requirements, and Code of Federal Regulations governing public use programs.

D. Participate in the development of refuge management plans for the restoration of fish and wildlife and habitats and public use.

E. Support development and maintenance of public use facilities especially for fishing activities and development of Mattamuskeet Lodge.

F. Collaborate in the development and sharing of public announcements on hunting and fishing opportunities on the refuge and nearby state lands, and other partner lands in the landscape surrounding Mattamuskeet NWR.

G. Conduct fisheries surveys to inform management decisions regarding enhancement of refuge fisheries populations.

H. Provide support, when possible, in the form of staff technical assistance, use of state owned equipment and facilities (subject to the limitations set forth below) and/or available funding to achieve the objectives of this MOU.

Responsibilities of the USFWS:

A. Participate per the 2014 Collaboration Memorandum between USFWS and NCWRC to support management of Mattamuskeet NWR.

B. Support research, habitat restoration, and public use enhancement projects.

C. Ensure NCWRC management of public hunting and fishing programs are consistent with refuge purpose, hunt and fishing plans, and NWRS overall management responsibilities and mandates.

D. Ensure the NCWRC has full and free access to Mattamuskeet NWR lands for the purposes set forth in this MOU, and the USFWS shall take steps necessary to provide for such access by the NCWRC. Coordination beforehand will occur on areas not open to the public to ensure safety, help protect sanctuary areas, avoid duplication of work, avoid compromising law enforcement efforts, etc.

E. Include NCWRC in the development of management plans for the restoration of fish, wildlife, and their habitats and improved public use opportunities associated with Lake Mattamuskeet.

F. Support development and maintenance of public use facilities for fishing activities and restoration of Mattamuskeet Lodge.

G. Collaborate in the development and sharing of public announcements on hunting and fishing opportunities on the refuge and other public lands.

H. Support fisheries surveys and appropriate management recommendations to enhance refuge fisheries populations.

I. Provide support, when possible, in the form of staff technical assistance, use of USFWS-owned equipment and facilities (subject to the limitations set forth below) and/or available funding for projects to achieve the objectives of this MOU.

Responsibilities of both parties:

A. The NCWRC and USFWS agree to coordinate on all matters of mutual interest involving the management of Mattamuskeet NWR with input from relevant stakeholders as needed, including future iterations of the Comprehensive Conservation Plan.

B. Consistent with the structure (three-tiered team approach) for actions outlined in the Memorandum of Collaboration, co-management activities (e.g., public hunting and fishing opportunities, research goals, etc.) will be evaluated by working groups commissioned by the Steering Committee. In the event that consensus cannot be attained on recommendations, an issue brief will be prepared and referred to the next tier until consensus is attained.

C. Consistent with a Communication Plan, use a variety of communication venues to provide one voice (NCWRC/USFWS) message(s) to the public regarding the status of Lake Mattamuskeet and the activities of the Collaboration Team.

D. Conduct research and monitoring projects to inform management actions to enhance lake water quality and quantity to meet the refuge purpose and NWRS' mission while providing compatible public uses such as fishing, hunting, wildlife observation, etc.

E. Collaborate on the necessary analyses (biological and legal) of the current and any alternate water management of Lake Mattamuskeet to improve lake conditions for submerged aquatic vegetation, fish and wildlife populations and address drainage issues for adjacent lands to Lake Mattamuskeet.

F. Develop an annual work plan that will direct work including research, survey and monitoring, management planning, public use activities, invasive species control and other activities as needed.

G. It shall be the responsibility of each party to interpret its own authorities and policies, and make decisions regarding actions taken under this MOU as required under law and policies applicable to each.

H. Nothing in this agreement shall be construed as obligating the USFWS or NCWRC in the expenditure of funds, future payment of money, or in the use of equipment or facilities unless specifically identified within this document.

VI. Period of Performance:

The period of performance of the MOU is from the effective date of signature by both parties for five (5) years. This MOU will be reviewed annually to ensure its purpose is being met. If, at the end of the performance period, and both parties are in agreement, the MOU can be extended for additional periods.

VII. Modification of Agreement:

This MOU constitutes the full, complete, and entire agreement between the partiers hereto. No modification or amendment of this MOU shall be binding on either party unless such modification or amendment shall be in writing executive in duplicate by both parties hereto, attached to this MOU, and incorporated by reference made a part of this MOU.

VIII. Termination of Agreement:

This MOU may be terminated by either party upon thirty (30) days written notice of such termination to the other party. If either party fails to fulfill its obligations under this MOU in a timely and proper manner, the other party shall have the right to terminate this MOU by giving written notice of the deficiency. In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. This MOU has no third-party beneficiaries (intended or incidental), who may enforce obligations of either party should the MOU be terminated.

IX. Funding Considerations:

It is hereby understood and agreed by the parties hereto that neither USFWS nor NCWRC shall be bound to make any expenditures under the terms of this MOU, except as funds are available by the appropriation of the Congress of the United States or the State of North Carolina respectively. Any tasks or projects that arise in the future that require an exchange of funding will be handled in a separate funding agreement.

X. Other Terms and Conditions:

No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this MOU, or to any benefit that may arise therefrom.

The NCWRC and the USFWS, their employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this MOU.

It is agreed by the parties hereto that, in the performance of this MOU, employees or agents of the NCWRC are not to be considered employees of the USFWS, and USFWS are not to be considered employees of the NCWRC.

The participation of the USFWS and NCWRC in activities conducted pursuant to this MOU is not intended to place either party or its representatives in a position of incurring tort liability arising from an action of the other party. Each party is responsible for any injury or property damage to third parties caused by negligence of its own employees acting within the scope of their employment/official duty subject to such limitation as may be prescribed by applicable laws. Specifically, tort liability arising from negligent or wrongful acts or omissions of USFWS employees acting within the scope of employment shall be governed by the Federal Tort Claims Act (28 USC 2671 -2689). Likewise, tort liability arising from negligent or wrongful acts or omissions of NCWRC employees while acting within the scope of official duty shall be governed by the provisions of state law.

Employee injury or death arising from activities conducted in fulfillment of this memorandum and within the scope of employment and/or official duty of the respective party shall be exclusively considered as a workers' compensation matter substantiated by the employer/employee relationship. USFWS employees are afforded workers' compensation coverage via provisions of the Federal Employee's Compensation Act (5 USC 8101. NCWRC employees are afforded coverage via provisions of state law.

During the performance of this MOU, the parties hereto agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin.

XI. Project Officers:

Per the December 2014 Memorandum of Collaboration between USFWS and NCWRC, this partnership represented by this MOU will be led by a two-person Executive Committee of Co-Chairs consisting of the Regional Chief, National Wildlife Refuge System and NCWRC Director or Chief Deputy Director, NC. This partnership will be managed by a four-person Steering Committee consisting of the Refuge Supervisor, Area III ("South Atlantic"), Chief of Wildlife Management for NCWRC, Project Leader/Refuge Manager for Mattamuskeet National Wildlife Refuge, and Chief of Inland Fisheries for NCWRC. The Steering Committee will commission working groups as needed to help implement the MOU. Once commissioned and charged, working groups will conduct their work independently of the Steering or Executive committees, unless requested by the group, reporting on their progress and recommendations periodically.

XII. Approvals:

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by an authorized official on the date and year set forth below their signature.

U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

BY: _____
TITLE: Regional Director, Southeast Region
DATE: 2/4/2016

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

BY: _____
TITLE: Chairman
DATE: 2-11-16

BY: _____
TITLE: Executive Director
DATE: February 11, 2016