

Briefing Statement

BUREAU: National Park Service
ISSUE: NPS implementation of Migratory Bird Treaty Act MOU with USFWS
PARKS: All
DATE: August 6, 2010

Key Issues:

- The BRMD intends to develop the guidance, direction and training that will be needed to implement the MOU.
- Implementation of the MOU could entail significant workloads for park staff.
- Coordination at the Regional and National level to develop sound guidance could greatly reduce the impact on parks.

Background:

- Migratory bird populations throughout the U.S. have declined greatly in the past 20 years, largely due to habitat declines in the U.S. and land management actions in their winter migratory areas (Central and South America).
- Conservation groups have successfully sued federal land management agencies and the U.S. Fish and Wildlife Service (USFWS) for lack of implementation of the 1918 Migratory Bird Treaty Act.
- To comply with Executive Order 13186, the NPS recently signed an MOU with USFWS on the conservation of migratory birds.
- The MOU outlines the actions which NPS agrees to take to maintain and improve populations of birds. A concern is that the MOU commits parks to responsibilities beyond their current capabilities, and presents no plan for how we will meet these expectations. For example, the MOU describes actions that the NPS would be committing to, including:
 - participating in landscape-level planning for migratory birds;
 - assessing impacts to migratory bird species of special concern using demographic, population, and habitat association data;
 - developing and implementing conservation measures for a wide range of NPS activities;
 - increasing the documentation of effects of management actions on migratory birds and the effectiveness of conservation measures to reduce unintentional take, including actions such as fire management, recreation, facilities construction, etc.
 - providing training at the park level regarding implementation of migratory bird conservation activities.
- The MOU does not address the difficult legal issue of “take” of migratory birds in day-to-day park operations (bird banding, facility maintenance, prescribed burning, etc.). The Act has no provision for incidental take of birds, eggs, or occupied nests during the conduct of otherwise lawful activities. Thus, it is not possible under the MBTA to absolve individuals or agencies from liability for unintentional take of migratory birds, even if they follow the guidelines recommended by the USFWS. The MOU acknowledges that there will be unintentional take of migratory birds under some circumstances, but offers no resolution for those technical violations of the law. Rather, NPS staff would have to continue to rely on the enforcement and prosecutorial discretion held by the USFWS Law Enforcement and the Department of Justice. While we aren’t aware of any prosecutions of NPS staff under the MBTA, we know this issue has been used in complaints, appeals and lawsuits against Federal agencies.

Current Status:

- Guidance to implement the MOU is needed from BRMD. It would be inefficient for IMR to take action ahead of WASO. Lack of guidance leaves parks at risk of criticism by some publics and is a source of conflict within some park staffs.

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Presidential Documents

Title 3—

Executive Order 13186 of January 10, 2001

The President

Responsibilities of Federal Agencies To Protect Migratory Birds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



THE WHITE HOUSE,
January 10, 2001.

MEMORANDUM of UNDERSTANDING
BETWEEN the
U.S. DEPARTMENT of the INTERIOR
NATIONAL PARK SERVICE and the
U.S. FISH AND WILDLIFE SERVICE
TO PROMOTE THE CONSERVATION OF MIGRATORY BIRDS

This Memorandum of Understanding (MOU) is made and entered into by and between the National Park Service (NPS) and the U.S. Fish and Wildlife Service (FWS), collectively referred to as the Parties.

A. Purpose

This MOU meets the requirements under section 3 of Executive Order 13186 concerning the responsibilities of Federal agencies to protect migratory birds.

National park units provide important habitats for migratory birds, but because most of these species use national parks in the United States seasonally, their protection cannot be assured without conservation efforts occurring outside of park boundaries domestically and internationally. Meeting management and legal responsibilities requires that the NPS develop the capability to identify, plan for, and mitigate actions adversely affecting migratory birds within park boundaries, and to collaborate with others throughout the birds' ranges to increase awareness of migratory bird issues. This MOU encourages the NPS to partner with Federal agencies, States, Tribes, local governments, and non-governmental organizations for the benefit of migratory birds.

The purpose of this MOU is to strengthen migratory bird conservation by identifying

and implementing strategies intended to complement and support existing efforts, and facilitate new collaborative migratory bird conservation partnerships and comprehensive planning strategies for migratory birds. This includes planning efforts and activities of bird initiatives, such as the Partners in Flight North American Landbird Conservation Plan, the U.S. Shorebird Conservation Plan, the North American Waterbird Conservation Plan, and the North American Waterfowl Management Plan. Planning efforts include those initiated through Joint Ventures (JVs), the North American Bird Conservation Initiative (NABCI), and the FWS's Strategic Habitat Conservation (SHC) and the Landscape Conservation Cooperative (LCC) planning frameworks.

This MOU establishes how the NPS and FWS will jointly promote the conservation of migratory birds by incorporating bird conservation measures into agency actions and planning processes. It also identifies NPS actions that could result in the unintentional take of migratory birds or impacts to their habitats, so that strategies can be developed to avoid, minimize, or mitigate the effects of those actions. Specific NPS actions are identified, where cooperation between the Parties could reduce or eliminate the risk of unintentional take of migratory birds, and contribute to conservation of migratory bird habitats.

B. Background

Pursuant to the Executive Order 13186, 66 Fed. Reg. 3853 (January 17, 2001), entitled "Responsibilities of Federal Agencies to Protect Migratory Birds," this MOU outlines a collaborative and proactive approach to promote the conservation of migratory bird populations. The Executive Order directs Federal agencies to minimize their negative impacts on migratory birds, promote conservation of migratory bird populations, and carry out certain actions to further implement the migratory bird conventions, the Migratory Bird Treaty Act (MBTA), the Bald and

Golden Eagle Protection Act (BGEPA), and other pertinent statutes. The Executive Order also calls on Federal agencies to take reasonable steps that include restoring habitat, incorporating migratory bird conservation into planning processes, promoting research and information exchange, providing training and visitor education, and developing partnerships beyond agency boundaries.

The MBTA, signed in 1918 and amended in 1936, 1974, and 1989, implements the United States commitment to four international conventions (with Canada, Mexico, Japan and Russia) for the protection of migratory birds. While the United States has signed specific agreements with these countries to protect migratory birds and their habitats, the authority of the MBTA includes birds that migrate across many other international boundaries as well. The species protected by the MBTA are listed in 50 CFR § 10.13. For the purposes of this MOU, a migratory bird is an individual of any species protected by the MBTA. This MOU does not alter the legal obligations of the Parties under the MBTA or the BGEPA. This MOU also does not authorize either intentional or unintentional take of migratory birds.

The U.S. Court of Appeals for the D.C. Circuit has ruled that Federal agencies are subject to the MBTA prohibition of take of migratory birds. Take, and other terms and abbreviations important to understanding this MOU, are defined in Section I. It includes both intentional and unintentional take. Intentional take is sometimes referred to as direct take, while unintentional take is sometimes referred to as indirect or incidental take.

Intentional take is prohibited without a permit issued by the FWS. Without a valid permit, both the agency and the individual carrying out this activity could be found to be violating Federal law. The FWS Regional Migratory Bird Permit Offices issue permits for allowed intentional take.

Unintentional take, also prohibited, is a result of human activities, for example, alteration of migratory bird habitat where migratory birds are taken as a result of agency actions. While intentional take on Federal lands has been regulated and monitored, migratory bird populations continue to decline. For this reason, reducing unintentional take of migratory birds is one of the primary purposes of Executive Order 13186; it seeks new ways to conserve migratory birds. The Executive Order requires each Federal agency that has, or is likely to have, effects on migratory bird populations, to develop an MOU with FWS to enhance the conservation of migratory birds.

C. Authorities

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

National Park Service Organic Act of 1916, as amended and supplemented (16 U.S.C. §§ 1-4)

Migratory Bird Treaty Act of 1918 (16 U.S.C. § 703-712)

Migratory Bird Conservation Act of 1934 (16 U.S.C. § 715 et seq.)

Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. §§ 668-668d)

Fish and Wildlife Act of 1956 (16 U.S.C. § 742a et seq.)

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321-4370d)

Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531-1544)

Fish and Wildlife Conservation Act of 1980 (16 U.S.C. § 2901-2911)

National Park Omnibus Management Act of 1998 (16 U.S.C. §§ 5931-5937)

Consolidated Natural Resources Act of 2008 (Public Law 110-229, Title III, § 301)

Responsibilities of Federal Agencies to Protect Migratory Birds, Executive Order No.13186, 66 Fed. Reg. 3853 (January 17, 2001)

D. Statement of Mutual Interest and Benefit

Both Parties have interests and responsibilities in the conservation and management of America's natural resources and both Parties agree that migratory birds are important components of biological diversity. Their conservation will help sustain ecological integrity and ecosystem services, including insect control, pollination, and seed dispersal. Migratory bird conservation also meets the growing public demand for education and outdoor recreation. Migratory birds are also important economically, and recreational activities associated with migratory birds contribute to the support of many communities. Further, the Parties agree that it is important to: (1) focus on bird populations; (2) focus on habitat restoration where actions can benefit specific ecosystems and the migratory birds dependent upon them; (3) focus on reducing the effects of climate change on migratory birds and their habitats; and (4) 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 Parties agree that this MOU shall be implemented to the extent permitted by law and in harmony with agency missions, subject to the availability of appropriations.

1. National Park Service

The mission of the NPS is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

The *NPS Management Policies 2006* call for NPS units to successfully maintain plant and animal populations by preserving and monitoring natural abundances and diversity of species, preserving the processes that sustain them, restoring populations

that have been reduced or extirpated by human activities, and minimizing human impacts on native species.

To meet its commitments for maintaining native species in parks, *Management Policies* specifically states, among other things, that NPS will cooperate with FWS, NOAA Fisheries, States, Tribal governments, and other countries to:

- participate in local and regional scientific and planning efforts, identify ranges of populations of native species, and develop cooperative strategies for maintaining or restoring these species in parks;
- develop data, through monitoring, for use in management programs at every level including international management negotiations for far-ranging seasonal migrants;
- provide information about species life cycles, ranges, and population dynamics in interpretive programs to increase public awareness of management needs.

Many NPS programs and individual park units are currently involved in bird conservation activities, including:

- a. The Park Flight Migratory Bird Program is the NPS national and international migratory bird program which protects shared bird species in United States, Canadian, Latin American and Caribbean national parks and protected areas by implementing bird monitoring and education projects, and creating opportunities for technical exchange and cooperation. The goals of the Park Flight Migratory Bird Program are to:
 - promote positive attitudes toward migratory birds and their conservation;
 - increase technical expertise and knowledge about bird conservation issues;
 - improve collaboration between parks and protected areas and encourage self-sustaining partnerships.

- b. The NPS Endangered Species Program provides recovery plan summaries for federally listed birds, and project funds to aid in restoration and recovery of threatened and endangered species in parks.
- c. The NPS Inventory and Monitoring Program collects, organizes, and makes available migratory bird data and facilitates analysis, synthesis, and modeling.
- d. The NPS Wildlife Management and Health Program assists parks in the collection, interpretation, and dissemination of information related to the health of birds. The program is involved with surveillance for highly pathogenic avian influenza and other diseases in migratory and resident birds.
- e. The NPS Natural Sounds Program collects, analyzes, and monitors acoustic data to assess the effects of noise on migratory birds and other species. Some bird species are particularly sensitive to the effects of noise, and high noise levels associated with anthropogenic sources, such as roads, have been shown to alter behavior, which in turn can reduce reproductive success.
- f. The NPS Night Sky Program collects baseline data on artificial light to assess the impact to both aesthetic and ecological park resources. Light pollution and glare have been associated with altering nesting preferences, disorientation, and collisions in migratory birds.
- g. The NPS Migratory Species Program, which is in its formative stages, will develop a strategy to provide the NPS with a long-term approach to addressing many of the issues facing migratory species, including birds. This will include documenting the habitat linkages necessary to accommodate their movements along migratory pathways.

- h. The NPS Ecosystem Restoration Program integrates several disciplines to assist parks with local habitat restoration projects through establishment of native vegetation and the management of invasive species. NPS restoration programs work with parks and interagency fire management programs to manage wildland fire in ways that restore the natural dynamics and integrity of habitat patches for migratory birds in the landscape.
- i. Individual park activities – such as restoration, monitoring, and education – contribute significantly to NPS bird conservation efforts. Examples include desert grassland restoration at Big Bend National Park, monitoring of breeding Piping Plovers at Cape Lookout National Seashore, and educational bird-banding demonstrations at Bandelier National Monument.

2. Fish and Wildlife Service

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 a focal point in the United States for policy development and strategic planning, program implementation, and evaluation of actions designed to conserve migratory birds and their habitats.

The FWS is legally mandated to implement the conservation provisions of the MBTA, which include responsibilities for managing 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, which includes habitat protection through acquisition, enhancement, and/or management to avoid and minimize impacts.

FWS programs that involve bird conservation activities include:

- a. The Division of Migratory Bird Management and Migratory Bird Programs in the FWS Regional Offices serve as focal points for policy development and strategic planning. These offices develop and implement monitoring and management initiatives that help maintain healthy populations of migratory birds and their habitats, provide continued opportunities for citizens to enjoy bird-related recreation, and issue permits for intentional take.
- b. The Division of Bird Habitat Conservation is instrumental in supporting habitat conservation partnerships through the administration of bird conservation grant programs and development of JVs that serve as major vehicles for implementing various bird conservation plans across the country.
- c. Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews involving 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.
- d. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, BGEPA, and other laws pertaining to migratory bird conservation.
- e. The National Wildlife Refuge System manages 550 National Wildlife Refuges (NWRs) and 38 Wetland Management Districts across the country, many of which were established to protect and conserve migratory birds. NWRs not only protect important habitat, but they also focus on monitoring migratory

bird populations and native habitat restoration for the benefit of migratory birds.

- f. The Partners for Fish and Wildlife Program is a voluntary habitat conservation program providing technical and financial assistance to private landowners for habitat improvement projects to benefit Federal trust species, including migratory birds. This Program works nationally with private landowners and has over 250 staff active in all 50 states and U.S. territories to facilitate habitat conservation.
- g. The Coastal Program is a non-regulatory, incentive-based program that provides technical and financial assistance to landowners and coastal communities to restore or protect fish and wildlife habitat on public and private lands. The mission of the Coastal Program is to work with partners to restore and protect important coastal habitat that benefits Federal trust species, including migratory birds.
- h. The National Conservation Training Center provides a variety of training and services that focuses on migratory bird management and conservation.

E. The Parties Will Work Together To:

1. Develop conservation measures that are consistent with the Executive Order and help to reverse the decline of migratory birds. These conservation measures will be developed in cooperation with other Federal agencies that conduct comparable activities. Training on how to implement these conservation measures will be a collaborative effort.
2. Protect and restore the natural habitats of migratory birds on lands administered

by NPS and prevent the loss or degradation of remaining natural habitats. This includes:

- a. Identifying actions that impact migratory birds, including breeding, migrating, or wintering habitats, and developing and following conservation measures that avoid or minimize these impacts.
 - b. Participating in landscape-level planning (e.g. LCC) to facilitate the development of conservation measures that benefit migratory bird species across multiple land ownerships, such as large-scale watershed and ecosystem projects.
 - c. Integrating information on migratory bird species and their habitats into interpretive and educational activities both within and beyond park boundaries.
 - d. Working collaboratively with partners to identify, protect, restore, and manage Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, and other significant bird sites that occur on NPS lands. This includes recognizing potential effects of climate change on habitats and migratory birds.
3. Work wherever possible with other Federal, State, and local resource agencies, Tribes, non-governmental organizations, and private landowners to identify, protect, restore, and manage natural habitats of species of concern (see Section I) beyond park boundaries. This includes:
- a. Participating in efforts to identify and protect Important Bird Areas and other special migratory bird habitats where an NPS unit is part of the broader

watershed or bioregion (e.g. LCC).

- b. Integrating information on migratory bird species and their habitats into outreach and education activities outside park boundaries.
4. Promote international migratory bird conservation where possible, working with national and international partners: This includes assisting other nations, as appropriate, in sustaining migratory bird populations and natural habitats through technical exchange and cooperation, including conservation planning, project support, habitat restoration, and education and training.
5. Promote collaborative inventory, monitoring, and management studies; research; and information exchange related to the conservation of migratory birds and management of their natural habitats. This includes:
 - a. Collecting, managing, analyzing, and reporting data and information on migratory birds through the NPS Inventory and Monitoring Program. This includes collaborating on the development of data standards and data systems.
 - b. Considering addition of sampling routes or sites for bird survey programs at the park, regional, or national levels. These programs include the Breeding Bird Survey (BBS), Monitoring Avian Productivity and Survivorship (MAPS) and other demographic (vital rate) studies which can help pinpoint problems in the life cycles of migratory birds, Program for Regional and International Shorebird Monitoring (PRISM), breeding bird atlases and other surveys as they are developed.
 - c. Collaborating with Bird Conservation Region Coordinators, JV Coordinators, Regional Bird Monitoring Coordinators, and other partners to develop, refine,

and implement effective regional bird monitoring programs for breeding, migrating, and wintering birds.

- d. Collaborating on studies and research to understand the effects of agency actions on migratory birds, and monitoring responses of bird populations to conservation measures once these measures have been developed and implemented.
 - e. Contributing inventory, monitoring, and research data for breeding, migrating, and wintering populations and habitats to appropriate national database repositories, such as BBS, MAPS, Avian Knowledge Network (AKN), the Natural Resource Monitoring Partnership (NRMP), the Bird Point Count Database, eBird, National Biological Information Infrastructure (NBII), and other databases as appropriate.
 - f. Contributing to the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation.
6. Promote training within the NPS and other Federal agencies on migratory bird management, monitoring methods and the inventory of populations and habitats. This includes:
- a. Participating in training on conservation measures that reduce or eliminate unintentional take of migratory birds.
 - b. Participating in training on the implementation of national protocols for assessing habitat conditions, migratory bird status and trends, and evaluating effects of agency actions on bird populations and natural habitats.

7. Facilitate the development of cooperative agreements with FWS for addressing priorities and funding projects for migratory birds that utilize park habitats and also depend on actions of other agencies and landowners.
8. Participate on the interagency Council for the Conservation of Migratory Birds established by the Executive Order to evaluate the implementation of this MOU. The Director of the NPS, or a representative designated by the NPS Director, will serve on the Council. The duties of the Council include the following:
 - a. Sharing the latest resource information to assist in the conservation and management of migratory birds.
 - b. Reporting annually on accomplishments and recommendations related to the Executive Order.
 - c. Fostering partnerships to further the goals of the Executive Order.
 - d. Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

F. The National Park Service will:

1. Where intentional take of migratory birds is anticipated to occur as a result of an authorized activity, the NPS will determine if any of those birds are species of concern. As part of compliance with NEPA, NPS will evaluate and document the effects of the proposed action on migratory birds, and will give priority to alternative methods or actions that avoid or minimize such take. If take cannot be avoided, NPS will provide advance notice to FWS, follow regulatory

requirements for activities subject to 50 CFR Part 21, and report numbers taken. If the migratory bird is listed under the ESA, NPS will undertake consultation with FWS and obtain a permit, as appropriate. If the migratory bird is a species of concern and take cannot be avoided, NPS must develop standards and procedures with FWS for minimizing such take and develop procedures for review and evaluation of take actions.

2. With regard to unintentional take of migratory birds, the superintendent of the NPS unit, or a designated representative of the superintendent, will, prior to starting any activity that is likely to result in the unintentional take:
 - a. Determine if any species of concern are likely to occur in the area of the proposed action. To identify those species of concern, consult the FWS Birds of Conservation Concern, State and Tribal lists, and the lists of comprehensive planning efforts (see Section I) for migratory birds.
 - b. Determine if any migratory bird species listed under the ESA is likely to occur in the area of the proposed action. If so, NPS will undertake consultation as appropriate with FWS.
 - c. Evaluate and document, as part of compliance with NEPA, the effects of the proposed action on migratory birds, focusing first on species of concern along with their priority habitats and key risk factors. Utilize the best available demographic, population, or habitat association data to assess impacts to species of concern. Also, identify where unintentional take that could reasonably be attributed to the action may have measurable negative effects on migratory bird populations.
 - d. Develop and implement conservation measures in cooperation with FWS for

actions or categories of actions to avoid or minimize unintentional take of migratory birds, with a primary focus on species of concern. Determine the effectiveness of such conservation measures by conducting inventory and monitoring, to the extent feasible, of migratory bird populations. Examples of NPS actions affecting migratory birds are identified in Section H.

- e. Retain pertinent records of the NPS action and the conservation measures to be implemented as part of the permanent NEPA file for a project. The evaluation of effects on migratory birds will be documented on the Environmental Screening Form used by NPS for NEPA compliance. The form should be revised to include potential effects to migratory birds in Resource Effects to Consider, and significant impacts to migratory birds (Executive Order 13186) in Mandatory Criteria.
3. Incorporate migratory bird conservation measures into NPS planning documents including General Management Plans, Resource Stewardship Strategies, Fire Management Plans, Vital Signs Monitoring Plans, Director's Orders, NEPA documents, guidance for contracts with concessioners and other cooperators, regional and network assessments, and site-specific projects. Evaluate and consider management objectives and recommendations from comprehensive planning efforts for migratory birds (see Section I).
 4. Identify and protect natural habitats of migratory bird species within park boundaries; address transboundary stressors such as air, noise, energy development, and light pollution that may impact those habitats. Restore such habitats, as practicable. Integrate information on migratory bird species and their habitats into educational and interpretive activities within NPS units and local communities.

5. Participate in planning efforts of Bird Conservation Regions (BCRs) or JVs to facilitate development of conservation actions that benefit migratory bird species across multiple land ownerships, including landscape connectivity initiatives. Increase awareness within NPS of information associated with BCRs and other comprehensive planning efforts for migratory birds (e.g. LCC).
6. Assess the effects of conservation measures in reducing the take of migratory birds. When necessary, evaluate and consult with FWS on revisions to any of these conservation measures.
7. Cooperate with the FWS and other Federal and State agencies in the management of invasive species through participation in sharing information, cooperative weed management areas, and other invasive species management plans.
8. Prevent or abate, to the extent possible, the pollution or detrimental alteration of migratory bird habitats in NPS units or affecting NPS units.
9. Follow published FWS guidance and other relevant information to minimize adverse effects to migratory birds in relation to communication towers, utilities, energy development projects, transmission corridors, and collisions.
10. Promote research, information exchange, and the coordination of inventory and monitoring of migratory birds and their habitat. Collect information on potential physical and biological stressors that could affect migratory birds. This includes participation with NABCI, regionally coordinated bird monitoring partnerships, and other partnerships with institutions and agencies involved in bird research and monitoring.
11. Provide training to appropriate NPS staff on implementation of migratory bird

conservation activities.

12. Recognize and promote economic and recreational values of birds in planning processes, ecoregional assessments, and outreach efforts as appropriate. Examples include the support of International Migratory Bird Day events, public presentations on birds, and participation in bird counts. Also identify and implement projects and programs to improve the opportunities for birdwatching.
13. Upon signing of this MOU, publish a notice in the Federal Register advising the public of its availability.

G. U.S. Fish and Wildlife Service will:

1. Coordinate with NPS by providing recommendations to minimize adverse effects upon migratory birds from NPS actions:
 - a. Work with the NPS in conjunction with other Federal agencies to develop reasonable and effective conservation measures that affect migratory birds and their natural habitats.
 - b. Provide essential background information to NPS to foster sound management decisions. This may include migratory bird distributions, status, key habitats, conservation guidelines, and risk factors. This includes updating the FWS list of Birds of Conservation Concern and LCC planning efforts.
 - c. Identify specific migratory bird habitats (e.g. nesting, stopover, molting, and wintering sites and migration corridors), and identify important ecological conditions to aid in collaborative planning.

- d. Provide technical assistance, at the request of the NPS, on migratory bird species, their habitats, monitoring, and conservation. This includes review and comment on NEPA documents and other planning documents as requested by the NPS.
2. Through the Division of Migratory Bird Management, continue to maintain a permits web page that provides links to all offices responsible for issuing permits and permit application forms for take of migratory birds.
3. Continue to provide training and assist the NPS and other Federal agencies in conducting training on the MBTA, BGEPA, the implications of the Executive Order, and the implementation of this MOU for more effective migratory bird conservation.
4. Provide technical assistance on determining how to prevent or abate pollution or detrimental alteration of migratory bird habitat.

H. NPS Actions

To administer park lands, the NPS determines management objectives, prescribes and applies management techniques, evaluates the outcome of those actions, and then adjusts management as needed. Actions by NPS may result in the take of migratory birds. While long-term management efforts may improve habitat conditions and restore the diversity and production of native migratory birds as well as other native species, some immediate short-term negative effects could result. As a signatory of this MOU, NPS will identify actions that affect migratory birds, and work with FWS to develop conservation measures that are consistent with *NPS Management Policies 2006*. All conservation measures for migratory birds must consider the effects of climate change, integrating the NPS climate change response strategies of protecting

key ecosystem features and processes, reducing current stressors, restoring damaged systems and natural processes, and maintaining representative ecosystems.

These conservation measures will address, but are not limited to, the following actions:

1. Ecosystem Restoration

While NPS units contain many other habitats that are important to migratory birds, the following habitat types are recognized as requiring special management attention for habitat protection and restoration to support migratory bird conservation. (The State of the Birds, United States of America, 2009, <http://www.stateofthebirds.org/>).

- a. **Grasslands.** Many impacted native grassland communities require intensive management to 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 fire, grazing, native species planting, invasive plant removal, haying, and mowing. Many grasslands have evolved with a natural fire and grazing regime and the successful restoration of native grasslands may require multiple techniques.

Forests and shrublands. Several tools could be used to create desired forest conditions and implement forest habitat restoration programs. Mechanical thinning, prescribed fire, natural fire management, and native ungulate management could affect migratory birds. In conjunction with other Federal land management agencies, NPS will work with FWS to develop conservation measures to avoid or minimize take of migratory birds during management activities and implement measures that will protect habitat for forest and

shrubland birds.

- c. Tundra habitats. Arctic (high-latitude) and alpine (high-altitude) tundra provides important breeding habitat for many migratory birds, including specialized species. These fragile habitats are particularly vulnerable to human disturbance and climate change.
 - d. Riparian habitats, wetlands, and lakes. NPS units contain lakes, wetlands, and riparian habitats that are critical for migratory birds. NPS will take action to prevent the destruction or degradation of vegetation in these habitats, and also restore these habitats where they have been degraded. Implementation of NPS wetland policy, which includes educational, recreational, and scientific components, will contribute significantly to migratory bird conservation.
 - e. Ocean and coastal habitats. NPS is focused on maintaining and restoring ocean and coastal ecosystem resilience to climate change. The NPS will take action to protect, restore and prevent the degradation and/or destruction of ocean and coastal habitats that are important to breeding, migrating, and wintering migratory birds.
2. Fire management practices. Migratory birds have evolved with different natural fire regimes. Fire plays an important role in shaping plant and animal communities, and is a valuable tool in restoring ecosystems altered by decades of fire suppression. However, overly frequent prescribed burning and uncontrolled fires can be detrimental to ecosystems and the migratory bird species they support. Conversely, in some areas of the country, the inadequate use or lack of prescribed fire is problematic. Fire management planning efforts must consider the effects of fire management strategies on the short- and long-term conservation

of migratory bird species.

3. **Invasive species management.** The proliferation of invasive plants and animals threatens the habitat for migratory birds in park units. NPS uses a variety of invasive species management techniques including prevention, inventory, monitoring, and control. The NPS is currently managing invasive plant species through cooperation with Federal and State partners and through the deployment of Exotic Plant Management Teams. Invasive animals, such as rats, snakes, feral pets, and feral hogs sheep and goats, also cause habitat degradation and direct avian mortality. A goal of the invasive species management program is the restoration and preservation of migratory bird habitat.

4. **Recreation and public use.** Over the last decade, there have been more than 270 million visits annually to units of the National Park System. Observing birds in their natural habitats and learning about their value in the ecosystem enhances the experience of many park visitors. The NPS must avoid causing unacceptable impacts to migratory birds and other park resources when providing opportunities for visitor enjoyment, including bird watching. Impacts on migratory birds may occur both through direct disturbances by visitors and through NPS activities associated with providing visitor services. NPS will encourage responsible bird watching that follows accepted ethical principles and complies with the NPS resource preservation and wildlife protection regulations in sections 2.1 and 2.2 of Title 36 of the Code of Federal Regulations . NPS units will evaluate the effects of recreational uses focusing on migratory birds where significant impacts are anticipated, and will use this information to reduce potential impacts.

5. **Construction and maintenance activities.** Building and maintaining roads, trails, and visitor-use facilities could have negative short and long-term impacts on migratory birds (e.g., nest destruction or disturbance). Design and construction of

these and other infrastructure improvements will be evaluated by the NPS and documented in conjunction with the NEPA process. NPS will utilize design and construction practices that minimize impacts to migratory birds, including window collisions.

6. Communication towers, utilities, energy development, and transmission corridors. Increased communication demands, changes in technology, and the use of alternative energy sources could impact migratory birds in NPS units. The NPS will consult with FWS and other partners in considering the potential effects on migratory birds when reviewing proposals for siting communication towers in or near NPS units. New utility and energy systems, including wind turbines, should be designed and constructed using FWS guidance and other relevant information to minimize impacts to migratory birds. To assess impacts, pre-construction and post-construction monitoring should be established collaboratively with partners. Existing structures that may result in unintentional take will be monitored and considered for modification, replacement, or removal, if necessary.
7. Agricultural grazing and other agricultural uses. Over 80 NPS units currently have domestic or feral livestock, although fewer than 30 parks have legislated grazing. The occurrence of domestic and feral livestock includes livestock operations, living history interpretive stock, pack and saddle stock, feral herds, and trespass animals. NPS will evaluate the effects of recreational and administrative uses of livestock on migratory birds and their habitats, including the increase in parasitism and non-native bird species. Activities that would cause unacceptable impacts to park resources will not be permitted. For NPS units with agricultural fields, haying and mowing should be timed to protect breeding birds.
8. NPS landscape-scale management actions. NPS will protect watershed systems

and the conditions of soils and surface water within these systems. Landscape-scale management actions will be evaluated to provide for the protection of migratory birds and their habitats, to the extent possible. These actions include those for the protection of air quality, geologic resources and processes, soundscapes, lightscares, and habitat connectivity.

I. Definitions

Action – as defined in Executive Order 13186, a program, activity, project, official policy, rule, regulation or formal plan directly carried out by a Federal agency. Some specific NPS actions that may affect migratory birds are addressed in Section H.

Avian Knowledge Network (AKN) – an international organization of government and non-government institutions focused on understanding the patterns and dynamics of bird populations across the Western Hemisphere (www.avianknowledge.net).

Bird Banding Laboratory (BBL) – part of the Department of the Interior, U.S. Geological Survey, the BBL issues permits to band birds or otherwise mark birds. In addition, the BBL serves as the primary U.S. government data repository for information regarding the banding and encounters of all banded migratory birds (www.pwrc.usgs.gov/bbl/).

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

Birds of Conservation Concern (BCC) – the list of migratory and non-migratory birds of the United States and its territories that are deemed to be the highest priority for conservation actions. The list is published and maintained by the U. S. Fish and Wildlife Service’s Division of Migratory Bird Management (www.fws.gov/migratorybirds).

Bird Point Count Database – a repository for bird point count data collected using standard protocols anywhere in North America, developed by U.S. Geological Survey’s Patuxent Wildlife Research Center and the American Bird Conservancy (www.pwrc.usgs.gov/point/).

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

Comprehensive planning efforts for migratory birds – the national and regional conservation plans developed by bird initiatives, JVs, or Bird Conservation Region partnerships. Bird initiative plans include Partners in Flight North American Landbird Conservation Plan, U.S. Shorebird Conservation Plan, North American Waterbird Conservation Plan, and the North American Waterfowl Management Plan.

Conservation measure – an action undertaken to improve the conservation status of one or more species of migratory birds. Examples include modifying the project design, surveys and inventories, monitoring, status assessments, land acquisition or protection, habitat restoration, population manipulation, research, education, interpretation, and outreach.

eBird – a real-time, online checklist program launched by the Cornell Lab of

Ornithology and National Audubon Society that provides data sources for basic information on bird abundance and distribution at a variety of spatial and temporal scales. The program's goal is to maximize the utility and accessibility of bird observations made by recreational and professional bird watchers (www.ebird.org).

Important Bird Areas (IBA) – a network of sites of variable size that provide essential habitat for the long-term conservation of birds. In the United States, the IBA network involves the National Audubon Society (www.audubon.org) and the American Bird Conservancy (www.abcbirds.org).

Incidental take – see Take.

Intentional take – see Take.

Invasive species – as defined in Executive Order 13112 (1999), a species not native to an ecosystem whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Joint Venture (JV) – a self-directed partnership of agencies, organizations, corporations, tribes, or individuals that has formally accepted the responsibility of implementing national or international bird conservation plans within a specific geographic area or for a specific taxonomic group.

Landscape Conservation Cooperatives (LCC) – conservation-science partnerships between the FWS, Federal agencies, states, tribes, non-governmental organizations, universities, and other entities. They provide science support to managers and partnerships responsible for developing and implementing conservation strategies at landscape scales, with an emphasis on biological planning and conservation design, acquisition of biological and spatial data, research, and related activities.

Migratory bird – an individual of any species protected by the Migratory Bird Treaty, listed in 50 CFR Section 10.13 (www.fws.gov/migratorybirds).

Monitoring Avian Productivity and Survivorship (MAPS) – a program created to assess and monitor the vital rates and population dynamics of North American landbirds, utilizing constant-effort mist netting and banding at a continent-wide network of monitoring stations (www.birdpop.org/maps.htm).

National Biological Information Infrastructure (NBII) – a broad, collaborative program to provide increased access to data and information on the nation's biological resources linking diverse, high-quality biological databases, information products, and analytical tools (www.nbio.gov).

Natural Resources Monitoring Partnership (NRMP) – a partnership of Federal, State, and conservation organizations that promotes more effective and efficient natural resource monitoring through the development of an online protocol database and an online monitoring project locator database (<http://nrmp.nbio.gov/portal/server.pt>).

North American Bird Conservation Initiative (NABCI) – an effort to unite the avian conservation community for implementation of bird conservation through biologically driven, regionally-based, landscape-oriented partnerships across North America. NABCI includes Federal agencies of Canada, Mexico, and the United States, as well as most landbird, shorebird, waterbird, and waterfowl conservation initiatives (www.nabci-us.org).

North American Waterbird Conservation Plan (NAWCP) – a coalition of Federal and State government agencies, non-governmental organizations, and private interests focusing on the conservation of aquatic birds such as seabirds, marshbirds, wading birds and coastal waterbirds (www.waterbirdconservation.org).

North American Waterfowl Management Plan (NAWMP) – a coalition of Federal and State agencies, non-governmental organizations, and private interests focusing on the conservation of waterfowl (www.fws.gov/birdhabitat/NAWMP).

NPS Management Policies 2006 – the basic NPS service-wide policy document. Adherence to these policies is mandatory unless specifically waived or modified by the Secretary of the Interior, the Assistant Secretary for Fish and Wildlife and Parks, or the Director of the National Park Service.

Partners in Flight (PIF) – an international coalition that focuses on the conservation of landbirds and includes Federal, State, Provincial, and territorial government agencies, First Nations, Tribes, nongovernmental organizations, universities, concerned individuals, and private industry in Canada, the United States, Mexico, Central America, South America, and the Caribbean (www.partnersinflight.org). NPS became a PIF signatory in 1991.

Permits – migratory bird permits issued by FWS Regional Migratory Bird Offices for the intentional take of migratory birds. Information on permits is found on the FWS permits web page (www.fws.gov/migratorybirds/mbpermits.html).

Program for Regional and International Shorebird Monitoring (PRISM) – a coordinated effort organized by Manomet Center for Conservation Sciences to survey shorebirds in North America, including information on the distribution, abundance and population trends of shorebirds. PRISM has four major elements: arctic and

boreal breeding surveys, temperate breeding surveys, temperate non-breeding (migration) surveys, and neotropical surveys (www.shorebirdworld.org).

Species of concern – migratory birds species identified in one or more of the following sources: (1) the FWS periodic report Birds of Conservation Concern (www.fws.gov/migratorybirds); (2) listed threatened and endangered bird species; (3) priority bird species documented in conservation plans completed under NABCI (Partners in Flight North American Landbird Conservation Plan, U.S. Shorebird Conservation Plan, North American Waterbird Conservation Plan, and North American Waterfowl Management Plan); and (4) listed as priority species or species of highest conservation concern in State Wildlife Action Plans. Species of concern may represent a group of species with the same ecological requirements, which face similar threats and require similar conservation actions.

Strategic Habitat Conservation (SHC) – a FWS adaptive resource management framework for making management decisions about where and how to deliver conservation efficiently to achieve specific biological outcomes.

Take – to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect (50 CFR § 10.12). Executive Order 13186 further defines take to include intentional take, meaning take that is the purpose of the activity in question, and unintentional (or incidental) 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.

Unintentional take – See Take.

U.S. Shorebird Conservation Plan (USSCP) – an effort undertaken by a partnership of Federal and State government agencies, non-governmental conservation

organizations, academic institutions, and individuals to ensure that stable and self-sustaining populations of all shorebird species are restored and protected (www.fws.gov/shorebirdplan/).

Western Hemisphere Shorebird Reserve Network (WHSRN) – a coalition of private and public organizations in seven countries working together to study and conserve shorebirds through conservation, restoration, and management of critical shorebird habitats throughout the Americas (www.whsrn.org/).

J. Dispute Resolution

Prevention of potential conflicts or resolutions of actual disagreements between the Parties will be attempted first at the lowest levels and elevated through the respective organizational levels if necessary. Conflict prevention or traditional Alternative Dispute Resolution (ADR) processes will be utilized to achieve consensus. Collaborative processes, including informal meetings or negotiations, will be used to avoid or minimize a dispute. If the dispute already has developed, more traditional processes may be appropriate, such as mediation or a negotiation assisted by a neutral third-party.

Notification of potential conflict or a dispute by either agency must be put in writing and attempts to resolve the matter at the Field level should occur within 30 days. If there is no resolution at this level within 30 days, either party may elevate the issue to the appropriate officials at NPS or FWS Regional offices. In the event that there is no resolution at the Regional offices within 30 days, the dispute may be elevated by either Party to the Washington D.C. office of each agency. The final arbiter of an unresolved dispute is the Assistant Secretary of the Interior for Fish and Wildlife and Parks.

K. It is mutually agreed and understood that:

1. This MOU in no way alters or diminishes any Party's obligations or responsibilities under any statute or other legal authority (e.g., MBTA, ESA, and BGEPA).
2. Either Party may terminate this MOU, in whole or in part, at any time before the date of expiration by providing the other Party with a written statement to that effect.
3. This MOU in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
4. Agency records, including those of the Parties to this MOU, are generally subject to the Freedom of Information Act (5 U.S.C. 552). Consistent with NPS legal authorities and policies, FWS will not release information that could be used to locate rare, threatened, endangered, or candidate species found in NPS units without written permission from the NPS.
5. This MOU in no way diminishes either Party's requirements for conducting environmental analysis, including National Environmental Policy Act requirements.
6. Modifications within the scope of the MOU shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes becoming effective.
7. This MOU is neither a fiscal nor a funds-obligation document.

between the Parties to this MOU, shall have prior approval of both Parties.

9. Meetings may be scheduled periodically by the Parties to review progress and identify opportunities for advancing the purpose of this MOU.
10. This MOU does not require changes to current contracts, permits, or other third-party agreements.
11. This MOU is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
12. The principal contacts for this MOU are as follows:

Chief, Biological Resource

Management Division

National Park Service

1201 Oakridge Drive, Suite 200

Fort Collins, CO 80525

Chief, Division of Migratory

Bird Management

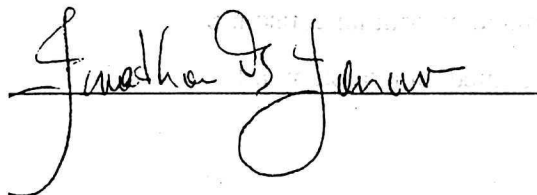
U.S. Fish and Wildlife Service

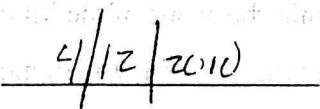
4401 N. Fairfax Drive, MS4107

Arlington, VA 22203

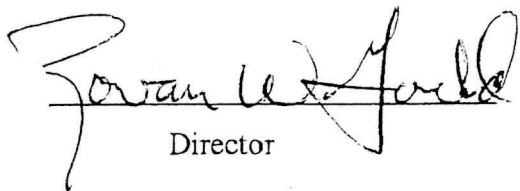
This MOU is effective as of the date of the last signature affixed below. It expires no later than ten years from the effective date, at which time it is subject to review and renewal, or expiration.

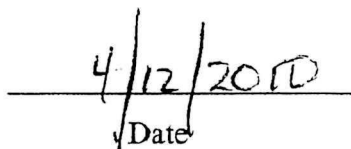
for the National Park Service:





or the U.S. Fish and Wildlife Service:


Director


Date