MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE U.S. FISH AND WILDLIFE SERVICE
TO PROMOTE THE CONSERVATION OF MIGRATORY BIRDS
UNDER
EXECUTIVE ORDER 13186: Responsibilities of Federal Agencies to Protect Migratory Birds

1. Purpose and Scope: This Memorandum of Understanding (MOU) is entered into by and between the U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (FWS), collectively referred to as the Parties.

a. This MOU serves as the agreement among the Parties to strive to enhance collaboration in the conservation of migratory birds by identifying and implementing strategies that promote conservation and avoid or minimize negative impacts on migratory birds, to include collaboration with state, tribal, and local governments. This purpose is consistent with the intent of Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds (Executive Order) (66 FR 3853, January 17, 2001), which directs executive departments and agencies to take certain actions to protect and conserve migratory birds. This MOU does not remove, relieve, or replace any legal requirements under the Migratory Bird Treaty Act (MBTA) and does not authorize the take of migratory birds.

b. The Parties agree to work cooperatively, where feasible, within agency jurisdictions and authorities, when and where compatible with the agency missions, and subject to availability of appropriations and within budgetary limits.

c. This MOU identifies specific activities where cooperation between the Parties will substantially contribute to the conservation and management of migratory birds, their habitats, and the associated values important to the people of the United States of America.

2. Missions of the Corps and FWS

a. **<u>Corps</u>**

(1) The primary mission of the Corps (Civil Works) is the planning, construction, and operation of water resources and other Civil Works Projects for flood risk management, navigation, and ecosystem restoration. Specific to the authorization or reauthorization of each project, Congress has added additional missions including hydropower, water supply, recreation, and environmental stewardship.

(2) The Corps manages over 600 man-made lakes and more than 12,000 miles of inland navigation channels (or “systems”) in the continental United States. Approximately 450 of those lakes include adjacent shoreline and lands owned in fee title. Reservoir projects include approximately 11.5 million acres of land and water and a total shoreline length that exceeds the coastline of the continental United States. The water surface and associated land at these lakes constitute a unique natural resource base. Riparian habitats, which have been identified as high-priority habitats in numerous Partners in Flight Bird Conservation Regions, are known to be an important landscape feature for many bird species. Corps projects maintain a wealth of riparian areas adjacent to lakes, streams, and rivers. Based on the distribution and position of Corps projects on the landscape, and their proximity to wetland, riparian, and aquatic habitats, Corps lands may provide important habitats for many breeding bird species, act as important stopover habitat for migrating birds, and provide wintering habitat for birds that reside in North America year-round.

(3) Where and when authorized, the Corps’ environmental stewardship mission is to manage and conserve resources consistent with ecosystem management principles, while meeting its missions of navigation, flood risk management, water storage, hydropower, emergency management, and recreation to serve the needs of present and future generations. In all aspects of natural resource management, the Corps promotes awareness of environmental values and adheres to sound environmental stewardship, protection, compliance, and restoration practices.

(4) The Corps also manages a robust regulatory program. The Department of the Army Regulatory Program’s mission is to protect and maintain aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.

b. **FWS**

(1) 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.

(2) 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 authorized the Federal government to acquire and permanently protect wetlands for waterfowl. It also created the Migratory Bird Conservation Commission, composed of Federal and State officials, to consider and approve proposals for land acquisition to conserve migratory waterfowl habitat. The Fish and Wildlife Coordination Act requires consultation with the FWS and the State fish

and wildlife agencies to provide equal consideration to wildlife conservation as part of water-resource development programs. Consultation is to prevent loss of and damage to wildlife resources. The FWS also manages populations of bald and golden eagles, which are protected under both the MBTA and the Bald and Golden Eagle Protection Act (Eagle Act).

(3) FWS programs that involve bird conservation activities include: The Division of Bird Conservation, Permits, and Regulations and the Migratory Bird Programs operate under a comprehensive Strategic Plan. That plan specifies that FWS will facilitate migratory bird conservation with other Federal partner agencies (Section 1.3) by seeking efficiencies and working collaboratively with other Federal partners to minimize duplication of effort in respective work plans, reduce threats, and to maximize communication about emerging issues that affect migratory birds. 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 population of migratory birds and their habitats to provide continued opportunities for citizens to enjoy bird-related recreation.

(a) 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.

(b) Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews of projects involving species protected by ESA. The Field Offices coordinate with the Regional FWS Migratory Bird Offices, as necessary, during these reviews, regarding permits and overall migratory bird conservation strategies.

(c) The Office of Law Enforcement (OLE) is the principal FWS program that enforces the legal provisions of the MBTA, Eagle Act, ESA, and other laws pertaining to migratory bird conservation.

(d) The National Wildlife Refuge System manages National Wildlife Refuges, Waterfowl Protection Areas, and Wetland Management Districts across the country. Many units of this system 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 Division of Refuge Law Enforcement enforces the legal provisions of wildlife laws on National Wildlife Refuges, Waterfowl Production Areas, and National Fisheries. The Division of Refuge Law Enforcement also assists OLE when needed.

(e) The Science Applications program works with other FWS programs and partners to ensure that the necessary science, tools, and capacity are available for

planning and implementing the most efficient and effective avoidance and minimization measures to protect fish and wildlife including migratory birds. They facilitate regional self-directed science management partnerships to develop and apply shared science capacity to conservation.

3. Statement of Mutual Interest and Benefit

a. Both Parties have interests and responsibilities related to the conservation and management of America's natural resources. The Parties acknowledge that migratory birds are important components of biological diversity and economically benefit and support communities and businesses. Conservation and management of migratory birds helps sustain ecological integrity and meet the growing public demand for outdoor recreation, conservation education, wildlife viewing, fishing, and hunting opportunities.

b. The Parties also recognize that it is important to identify measures that will:

(1) Promote migratory bird conservation; and

(2) Restore and enhance migratory bird habitat by incorporating ecosystem-specific considerations into planning processes.

c. It is in the interests of both Parties to thoroughly assess actions, polices, and projects that may negatively affect migratory birds, with the goal of considering and implementing mitigation measures as appropriate. The Parties recognize that actions providing long-term benefits to migratory bird populations may sometimes result in short-term negative impacts on individual birds. Historically, the Corps has coordinated with the FWS during the analysis conducted under the National Environmental Policy Act (NEPA) as well as during processes required by other statutes such as the MBTA, ESA, Bald and Golden Eagle Protection Act, and FWCA.

4. It Is Mutually Understood That:

a. Subject to their respective legal authorities, jurisdictional limitations, regulations, policies, skill sets, and funding, the Parties will strive to:

b. When and where practicable and compatible with agency missions, incorporate migratory-bird-habitat and population-management objectives and recommendations into agency planning studies, engineering studies and design documents, and operation and management plans. Both parties should incorporate these management objectives and recommendations in cooperation with other governments, state and federal agencies, and non-federal partners. This process will strive to:

(1) Identify management objectives and recommendations for species of concern, suites of species, and habitats or ecosystems in formats useful to

management, planners, and decision-makers. A good source of this information is the FWS Information for Planning and Consultation (IPaC) website: https://ecos.fws.gov/ipac/

(2) Ensure that environmental analyses of Federal actions that require NEPA compliance, including permitting or otherwise authorizing the actions of third parties, address the effects of actions and agency plans on migratory birds, where and when appropriate, with emphasis on FWS Birds of Conservation Concern (BCC) and their habitats, and key risk factors identified by the FWS.

(3) Identify best practices for:

(a) Avoiding and minimizing negative impacts to migratory birds;

(b) Conserving and restoring migratory bird habitats;

(c) Promoting bird conservation;

(d) Conducting inventory and monitoring activities;

(e) Where appropriate, monitoring demographic parameters of migratory birds; and

(f) Standardizing collection techniques of migratory bird data to allow cross-study comparison. Best practices that are feasible will be incorporated into tools for streamlining environmental review guidance, and agency policy documents where appropriate.

(4) Incorporate, where relevant, migratory bird “best management practices” into the planning processes associated with programs and projects.

c. Seek opportunities to further migratory bird conservation through outreach and education initiatives to the public through print media, social media platforms, and personal contact with school groups visiting public lands and parks. This may also include promotional and organizational support for signature conservation events and special awareness days such as National Public Lands Day, World Wildlife Day, and World Migratory Bird Day. Where applicable, post signage and educate public in areas with shorebirds. Specific topics for signage and education include proper trash disposal to avoid attracting nest predators, minimizing shorebird disturbance by keeping enough distance to avoid disturbing birds, leashing pets, avoiding driving and flying kites and drones on the beach, particularly during nesting and migration seasons.

d. Establish 5-year work plan between agencies to identify areas of mutual interest and opportunity such as training, studies, inventories, regional priority species priority habitat enhancement projects, etc.

e. Develop partnerships to further migratory bird conservation, as practicable. This may include cooperation, coordination, and data sharing with the U.S. Shorebird Conservation Plan partners, other Federal or State agencies, universities, potential developers or their contractors, and nongovernmental organizations involved in monitoring and research studies. Cooperation and data sharing should focus on providing reliable and comparable information on the distribution and abundance or status and trends of migratory bird populations.

f. Promote collaborative migratory bird inventories through site visits of Corps project or facility lands by Corps, State, or FWS employees, in addition to monitoring, management and information exchange related to the conservation of migratory birds and management of their habitats. This collaboration includes:

(1) Facilitating coordination among agencies to conduct baseline inventory and habitat assessments on Corps lands, including promoting cooperative efforts to access lands and conduct those assessments.

(2) Collaborating with Regional Migratory Bird Program staff and Joint Venture staff to develop, refine, and implement effective regional breeding bird monitoring programs, with increasing emphasis on transient migrant and wintering birds and their habitats.

(3) Collaboration between agencies, using national protocols and programs to identify the habitat conditions needed by migratory bird species of concern, to sustain populations of co-existing species and understand the effects of management activities on those species.

(4) Sharing inventory, monitoring, research, and study data for breeding, migrating, and wintering bird populations and habitats in a timely fashion with national data repositories such as Breeding Bird Survey, Monitoring Avian Productivity and Survivorship (MAPS), Cornell's eBird, and the Avian Knowledge Network.

g. Annually evaluate the measures taken under this MOU to protect, restore, and enhance migratory bird resources, including measures to avoid or minimize take of migratory birds and, if necessary, discuss alternatives to ensure that the most effective best management practices are employed.

h. Participate in the interagency Council for the Conservation of Migratory Birds to evaluate the implementation of this MOU. The Council duties 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 Executive Order 13186.

(3) Fostering partnerships to further the goals of this order.

(4) Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

5. The Fish and Wildlife Service Will Strive To:

a. Work with the Corps by providing recommendations to avoid and minimize adverse effects upon migratory birds from Corps actions. FWS may also incorporate these recommendations into IPaC for ease of reference.

b. Provide essential background information to the Corps when requested, or through online tools such as AKN and IPaC, to ensure sound management decisions. This information may include:

(1) Migratory bird distributions, status, key habitats, conservation guidelines, and risk factors within each Bird Conservation Region.

(2) Changes to the MBTA and its regulations and procedures or other Acts and their regulations affecting management of migratory birds.

(3) Population trends of species that the Corps' activities may affect.

(4) Protection measures for reducing human-caused bird mortality that may be applicable to Corps activities, as new information becomes available.

(5) Proactively share with the Corps new guidance documents, tools, and job aids designed to improve understanding of MBTA requirements and further the ability of CBP to promote the conservation of migratory birds.

c. Update the FWS publication of *Birds of Conservation Concern* at regular intervals, for reliable reference.

d. Recommend scientifically supported BMPs that the Corps could programmatically adopt in addressing migratory bird issues and reducing negative effects on migratory birds and their habitat.

e. Work cooperatively with the Corps to provide information on existing BMPs, develop new BMPs as needed, and provide recommendations regarding feasible BMPs for Corps projects and actions that have the potential to take migratory birds.

f. Work to identify important migratory bird habitats (i.e., migration corridors and

staging, wintering, nesting, brood-rearing, stop-over habitats, ecological conditions important to nesting habitats, foraging habitats on or adjoining OCS) to aid in collaborative planning.

g. Through IPaC or through the relevant Regional Migratory Bird office, provide to the Corps, upon request, technical assistance on migratory bird species and their habitats.

h. Through the appropriate Ecological Services Field office, provide to the Corps, upon request, technical assistance for avoiding and minimizing project-related effects on migratory birds and their habitat resulting from Corps actions.

i. Review and comment on NEPA documents and other planning documents forwarded by the Corps. When appropriate, due to special expertise, join as a cooperating agency for preparation of NEPA documents.

j. FWS HQ shall work to facilitate annual interagency meetings between migratory bird Points of Contact (POCs) at FWS and USACE Headquarters and Regional Offices to share work products, facilitate communications and share updated contact information.

k. Through the Division of Bird Conservation, Permits, and Regulations, continue to maintain, update, and promote awareness of the current FWS Web page on permits (https://www.fws.gov/program/migratory-bird-permits) that provides links to all offices responsible for issuing permits and permit application forms for take of migratory birds.

l. The Migratory Bird Program will update and provide guidance to FWS Ecological Services Field Offices to ensure consistency in the interpretation and implementation of the MBTA as it applies to all Federal actions.

m. Develop coordination procedures (with Corps input) with FWS Regional Migratory Bird offices and FWS HQ Migratory Bird Division that detail how to incorporate migratory bird issues into environmental reviews. These 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.

n. FWS Ecological Services Offices will assist the Corps, when requested and when practical for ES staff, with technical information in identifying bird Best Management Practices for consideration in the Corps decision-making processes and planning and management documents. This assistance would be designed to aid the Corps in avoiding or minimizing the adverse impacts of Corps actions on migratory birds and their habitats.

o. Provide a list of migratory birds, including species of concern and their habitats (e.g., migratory bird concentration areas; migration corridors; staging and stop-over

areas or habitats; and nesting, rearing, and feeding habitats) that may occur in the proposed project area to the Corps during the initial stages of planning. This action should follow initial IPaC (Information for Planning and Consultation) review by the Corps and should include any pertinent goals for those species and habitats.

p. Cooperate and coordinate with other federal agencies, state agencies, tribal agencies, universities, and independent non-governmental organizations to develop and conduct surveys that provide reliable information on the status and trends of migratory bird populations.

q. Through FWS programs, conduct informational and educational programs for the Corps about migratory bird conservation.

r. Provide opportunities for training on migratory bird inventory, management, and monitoring methods and practices for migratory birds and their habitats. This includes:

(1) Developing or sponsoring training on measures and practices that avert detrimental impacts to migratory bird species, including nesting, rearing, feeding, migration, or over-wintering populations and habitats.

(2) Developing or sponsoring training on implementation of national protocols approved or adopted by the FWS for determining habitat conditions and bird population status and trends, and studies for evaluating the effects of specific activities on migratory birds and their habitats.

(3) Developing or sponsoring training on habitat restoration methods and techniques.

6. The U.S. Army Corps of Engineers Will Strive To:

Subject to the Corps' legal authorities, jurisdictional limitations, regulations, policies, skill sets, mission requirements, and funding, the Corps will strive to:

a. Engage in early planning and coordination 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 identify appropriate actions to avoid or minimize the take of migratory birds.

b. Assess and document the effect of proposed actions on species of concern through the project planning process by using tools such as IPaC and incorporate that analysis into NEPA and environmental review documents when applicable and practical.

c. Ensure that migratory birds and their habitats, with emphasis on Birds of Conservation Concern, are included in the scope of environmental reviews, including consideration of direct and indirect effects of the proposed action and reasonable modifications and alternatives to minimize such effects or impacts.

d. Use existing regional or national inventory and monitoring programs, like the Breeding Bird Survey (BBS), BBIRD, or Christmas Bird Counts, to assess the status and trends of bird populations and habitats, including migrating, breeding, and wintering birds on Corps lands and waters where practicable and feasible.

e. Protect, restore, enhance, and manage habitat of migratory birds, and prevent the loss or degradation of remaining habitats on Corps-managed lands through the identification of management practices that impact migratory birds and development of recommendations to minimize such impacts, collaboration with partners to identify, protect, restore, enhance, and manage significant bird habitats, restoring and maintaining areas to support native species, preventing the establishment of invasive species, and establishing public interpretive and environmental education programs focused on the value and importance of migratory birds.

f. Identify opportunities to use dredged material during maintenance dredging operations and beach nourishment activities to create or improve habitat for migratory shorebirds, waterbirds, and other species that use these habitats.

g. Identify a point of contact for this MOU.

h. Implement actions such as those described in USACE's Migratory Bird Treaty Act Best Management Practices document (Appendix B) that support migratory birds.

i. Use available authorities to enter into agreements or partnerships with other Federal agencies, states, other government entities, and private organizations and partners to conserve and enhance migratory birds in a manner compatible with Corps' project missions.

j. Address changing landscapes, changes to bird habitats, prey densities, and bird populations related to changing disturbance regimes, changing weather patterns, changing sea levels, and extreme events like weather and fires. When applicable and possible, use available tools and integrate related plans and approaches, such as the Resist-Accept-Direct (RAD) Framework to address these environmental factors.

k. Share bird-conservation accomplishments with the Council for inclusion in the Annual Reports.

7. It is Mutually Agreed and Understood That:

a. This MOU is a non-binding agreement that expresses mutual understandings of the Parties and shall not under any circumstances be interpreted as an enforceable contract at law. Nothing contained in this MOU is intended or should be construed to limit or affect the authority or legal responsibilities of the Parties or bind them to perform any actions.

b. This MOU will be implemented consistent with applicable law and subject to the availability of appropriations.

c. Each Party is responsible for all costs of its personnel, including this IAW DoDI 4000.19, Support Agreements.

d. but not limited to, pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

e. This MOU may be terminated at any time by mutual written agreement of the Parties or by either party upon 30 business days written notice to the other party.

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

g. Any information furnished to the Parties under this MOU is subject to the Freedom of Information Act (5 U.S.C. § 552).

h. Modifications within the scope of this MOU shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by the Parties, prior to any changes being performed.

i. This MOU is neither a fiscal nor a funds obligation document. This MOU does not commit or authorize the expenditure of any funds. Any endeavor involving reimbursement, contribution of funds, services, or materials 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. These endeavors will be outlined in separate written agreements made by representatives of Any actions taken by either of the Parties must be independently authorized by appropriate statutory authority. This MOU does not provide that authority. Specifically, this MOU does not establish authority for noncompetitive award of any contract or other agreement. Any contract or agreement for training or other service must fully comply with all applicable requirements for competition.

j. Any press releases that reference this MOU, or the relationship established between the Parties of this MOU, must be approved by both Parties prior to release.

k. This MOU does not require changes to current contracts, permits, or other third-party agreements.

l. 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.

m. Unless terminated earlier by one or both parties, this MOU will be reviewed after five years and automatically expire ten years after the date of execution.

8. The Principal Contacts for this MOU are as Follows:

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

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EDWARD BELK
Director of Civil Works
U.S. Army Corps of Engineers

7/23/25
Date

MARTHA WILLIAMS
Director
U.S. Fish and Wildlife Service

Date