

Appendix G

Draft Memorandum of Understanding Between the Federal Emergency Management Agency and the United States Fish and Wildlife Service Regarding Implementation of Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds”

This Memorandum of Understanding (MOU) is entered into by and between the Federal Emergency Management Agency (FEMA) and the United States Department of the Interior, Fish and Wildlife Service (FWS), herein collectively referred to as the Parties.

A. Statement of Purpose

This MOU meets the requirements under Section 3 of Executive Order (E.O.) 13186 - Responsibilities of Federal Agencies to Protect Migratory Birds (66 FR 3853, January 17, 2001). E.O. 13186 directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act (MBTA). The purpose of this MOU is to strengthen migratory bird conservation through enhanced collaboration between FEMA and FWS, in coordination with the state, tribal, and local governments and private entities that may be eligible for FEMA grant assistance. This MOU does not waive legal requirements under the MBTA or any other statutes and does not authorize the take of migratory birds. This MOU identifies specific areas in which cooperation between the Parties will substantially contribute to the conservation and management of migratory birds and their habitats.

The purpose of this MOU is to establish procedures to be utilized by the Parties to monitor, assess, minimize and avoid avian mortalities at telecommunications towers funded by FEMA’s various grant programs and at FEMA-owned towers. The MOU focuses on the construction of new communication towers and modifications (e.g., retrofits) to existing towers (both grant-funded and FEMA-owned), and decommissioning of obsolete FEMA-owned towers. This MOU addresses site and structure-specific issues that may affect migratory birds and commits FEMA to implementing strategies to avoid or minimize the take of migratory birds that may result from the siting, construction, and operation of towers funded by FEMA under its various grant programs.

B. Authority

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

- Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq)
- Bald Eagle Protection Act (Bald and Golden Eagle Protection Act), as amended (16 U.S.C. 668 et seq)
- National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq)
- Endangered Species Act, as amended (16 U.S.C. 1531 et seq)

Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, 2001 (66 FR 3853) (Attachment)
Executive Order 11990, Protection of Wetlands, 1977 (42 FR 26961)
Executive Order 11988, Floodplain Management, 1977 (42 FR 26951)
Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. 1251 et seq)
Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901-2911)
Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742 et seq.)
Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715r)

C. Missions of Both Parties

FEMA

FEMA's mission is to support citizens and first responders to ensure that the nation works together to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. FEMA strives to fulfill its mission in compliance with national environmental planning and historic preservation (EHP) policies, through the full and transparent integration of EHP values and requirements into emergency management decision-making and processes.

Public safety telecommunications towers and their associated facilities, intended to improve communications among first responders and improve public safety during an emergency event, are an eligible project type under a variety of disaster and non-disaster grant programs administered by the agency. On average, FEMA provides grant funding for at least 300 telecommunication tower projects. The number of grant-funded tower projects depends on annual appropriations legislation and the number of submitted and eligible project proposals.

FWS

The mission of the FWS is to work with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The FWS Division of Migratory Bird Management 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 includes responsibilities for managing migratory bird populations, domestic and international coordination, and the development and enforcement of regulations. In addition, the Migratory Bird Conservation Act and the Fish and Wildlife Coordination Act mandate migratory bird habitat conservation including habitat protection through acquisition, enhancement, and/or management, and avoidance and minimization of impacts.

FWS programs that involve bird conservation activities include:

1. The Division of Migratory Bird Management and the Migratory Bird Programs in the FWS Regional Offices serve as focal points for policy development and strategic

planning. These offices develop and implement monitoring and management initiatives that help maintain healthy populations of migratory birds and their habitats; and provide continued opportunities for citizens to enjoy bird-related recreation.

2. The Division of Bird Habitat Conservation is instrumental in supporting habitat conservation partnerships through the administration of bird conservation grant programs and development of Joint Ventures that serve as major vehicles for implementing the various bird conservation plans across the country.
3. Ecological Services Field Offices across the country serve as the primary contacts for technical assistance and environmental reviews of projects funded by FEMA involving migratory bird issues. The Field Offices coordinate with the Regional Migratory Bird Offices, as necessary, during these reviews regarding permits and overall migratory bird conservation for FEMA activities.
4. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, Endangered Species Act (ESA), Bald and Golden Eagle Act (BGEPA) and other laws pertaining to migratory bird conservation.
5. The Division of Refuges and Wildlife manages 550 National Wildlife Refuges (NWRs) and 37 Waterfowl Production Areas across the country, many of which were established to protect and conserve migratory birds. NWRs not only protect important habitat, but also focus on monitoring migratory bird populations and native habitat restoration for the benefit of migratory birds.

D. Statement of Mutual Interest and Benefit

The Parties agree that migratory birds are an important component of biological diversity. Migratory bird conservation and management will help sustain ecological integrity and help meet the growing public demand for conservation education and outdoor recreation, such as wildlife viewing, and hunting opportunities. Migratory birds also are important economically and activities focused on birds provide financial benefits to local communities and businesses.

It is in the interests of both Parties that potential impacts associated with towers be thoroughly assessed and that mitigation measures be considered and implemented as appropriate. FEMA uses the NEPA process to evaluate potential impacts of proposed actions and alternatives, including impacts to migratory birds and their habitats. The potential impacts on migratory birds associated with communication towers and associated infrastructure (transmission and distribution lines, lighting, access roads, equipment buildings, etc.) include electrocution, death or injury from collision, and radiation.

Furthermore, the Parties mutually agree that it is important to: 1) focus on bird populations; 2) recognize that actions taken to benefit some migratory bird populations may adversely affect other migratory bird populations; and 3) recognize that actions that

may provide long-term benefits to migratory birds may have short-term impacts on individual birds.

E. Obligations of Both Parties

To the extent allowed by law, subject to the availability of appropriations and within Administration budgetary limits, and in harmony with the missions of FEMA and FWS and their capabilities, both Parties shall:

1. Protect, restore, enhance and manage habitats of migratory birds, to the fullest extent practicable. This includes:
 - a. Implementing best management practices that minimize or avoid adverse impact on migratory bird populations, and their breeding, nesting, rearing, migration, roosting, staging, resting or over-wintering habitats.
 - b. Working collaboratively with Federal and State agencies to identify, protect, restore, enhance, monitor and manage important migratory bird areas. This includes Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, and other significant bird sites.
 - c. Preventing or abating the pollution or detrimental alteration of the environment of migratory birds.
 - d. In accordance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, restore and preserve the natural and beneficial functions and values of floodplains and wetlands and avoid long and short term adverse impacts associated with the destruction or modification of wetlands that serve as habitat for migratory birds.
2. Promote collaborative inventorying, monitoring, management studies, research, and information exchange related to the conservation of migratory birds and management of their habitats as it relates to agency decisions and management practices that may impact migratory birds. This includes information on environmental contaminants and other physical and biological stressors that are relevant to the conservation of migratory birds. This includes:
 - a. Sharing inventory, monitoring, research and study data for breeding, migrating and wintering populations and habitats in a timely fashion with national repositories (such as Breeding Biology Research and Monitoring Database (BBIRD), Monitoring Avian Productivity and Survivorship (MAPS), and National Point count Database), other Federal and State agencies as appropriate, and among FEMA offices, as practicable.
 - b. Collaborating, as practicable, in management studies and research with national or regional standardized protocols, to identify the habitat conditions needed by migratory birds, to understand inter-relationships of co-existing species, and to

evaluate the effects of FEMA-funded management activities on habitats and populations of migratory birds.

c. Developing partnerships with other agencies and non-Federal entities to further bird conservation, as practicable. This includes cooperation, coordination, and data sharing with other Federal or State agencies, universities, potential developers or their contractors, and nongovernmental organizations involved in monitoring and research studies to provide reliable and comparable information on the distribution and abundance or status and trends of migratory bird populations. FEMA shall identify staff to participate in meetings of the multi-stakeholder Communication Tower Working Group, chaired by FWS, and its Research Subcommittee to share late-breaking research efforts focused on avoiding and minimizing impacts to migratory birds.

d. Identifying best practices for: 1) avoiding and minimizing take of migratory birds; 2) conserving and restoring migratory bird habitats; 3) evaluating the effectiveness of mitigation measures and/or habitat restoration or enhancement; 4) monitoring demographic parameters of migratory birds; 5) standardizing collection techniques of migratory bird data to allow cross-study comparison; and 6) promoting bird conservation. The best practices will be reviewed and updated periodically by the Parties to incorporate new information and techniques.

e. Develop and integrate information on migratory birds into outreach and education materials and activities, such as technical assistance visits, on-line and classroom training on environmental compliance, information bulletins, websites, etc.

3. Identify and pursue training opportunities, as appropriate, for employees or grantees in the most appropriate methods and techniques to: 1) inventory and monitor migratory birds; 2) assess population status of migratory birds; 3) assess temporal and spatial bird use in specific areas; 4) evaluate impacts of projects on migratory birds; and 5) develop management practices that avoid or minimize adverse impacts and promote beneficial proactive approaches to migratory bird conservation.
4. Periodically evaluate the measures taken pursuant to this MOU to protect, restore, and enhance migratory birds and their habitats, including avoiding or minimizing take of migratory birds. The FWS Division of Migratory Bird Management, Ecological Services, and Endangered Species Offices and the FEMA agree to design and implement feasible and effective conservation measures.
5. Participate annually, or as needed, in the interagency Council for the Conservation of Migratory Birds to evaluate the implementation of this MOU. 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. Developing an annual report of accomplishments and recommendations related to Executive Order 13186.
- c. Fostering partnerships to further the goals of Executive Order 13186.
- d. Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

F. Obligations of FEMA

FEMA shall:

1. Integrate migratory bird conservation principles, as well as reasonable and feasible conservation measures and management practices, into agency activities, including grants. This includes:
 - a. Identifying towers and associated infrastructure, actions, and practices that impact migratory birds, including breeding, nesting, rearing, feeding and foraging, staging, loafing, roosting, migration stop-over, key-migration corridors or over-wintering habitats on project-affected lands or rights-of-way.
 - b. Recommend that grantees/subgrantees follow FWS recommendations existing at the time of project implementation for minimizing impacts to migratory birds for new and re-issued licensed towers. These recommendations include:
 - 1) Co-location of communication equipment on existing towers or other tall structures (e.g. water tower, building) is preferred over construction of a new tower. When possible, new towers should be designed structurally and electronically to accommodate at least 6 to 10 additional users, unless the design would require the addition of lights and/or guy wires to an otherwise unlit and/or unguyed tower.
 - 2) Communication towers, where practicable, should be less than 200 feet above ground level (AGL) in height, be of monopole or lattice design, contain no guy wires and lights, except where required along major highway travel corridors and within 3.8 statute miles of approach and departure airport runways (i.e. towers should be unlighted if Federal Aviation Administration (FAA) regulations allow). This recommendation represents the environmentally-preferred industry standard for tower placement, construction, and operation. This includes all new communication towers, and where possible, the repair or re-construction of outdated or damaged towers, and the upgrade and modification of existing towers.
 - 3) All new and re-issued licensed towers should be fitted in decreasing order of priority with white strobes, red strobes, or blinking incandescent lighting, and no L-810 side lights should be used.

- 4) Encourage grantees/subgrantees to remove towers that are no longer functioning within 12 months of becoming inoperative.
 - 5) Where tower height and guy wires are a concern regarding impacts to migratory birds, shorter, un-guyed towers should be constructed, even if larger numbers are needed to provide equivalent service. Thus, a larger overall footprint is preferable to the use of guy wires.
 - 6) Towers exceeding 199 feet AGL in height, even those that are several hundred feet AGL in height, do not necessarily need to be guyed, and FEMA will encourage grantees to use a lattice or monopole design. However, towers may need to be guyed in areas subjected to hurricanes, tornadoes, etc. Where a tall, guyed, lighted tower is proposed, several unguyed towers less than 200 feet AGL are recommended instead of the one tall tower.
- c. The recommendations in Section F.1.b shall also apply to FEMA-owned towers. In addition, the following recommendations shall apply to FEMA-owned towers:
- 1) When L-810 lights on existing towers burn out, they should each be replaced in decreasing order of priority with white strobe, red strobe, or red blinking incandescent lighting.
 - 2) Upon re-issuance of tower broadcast licenses, tower lighting systems must be retrofitted preferably with minimum intensity, maximum off-phased white strobe lighting as a first option; followed by minimum intensity, maximum off-phased red strobe lighting; and finally with minimum intensity, maximum off-phased red blinking incandescent lighting. Pending FAA approval, all L-810 steady burning red lights should also be removed.
 - 3) All towers be retrofitted within 5 years of the effective date of this MOU (preferably a shorter duration) in decreasing order of priority with white strobe, red strobe, or red blinking incandescent lighting. No L-810 side lights should be used.
2. For towers that do not meet the recommendations in Section F.1.b, require grantees/subgrantees to provide justification for why a height above 199 feet AGL, use of guy wires, and/or use of lighting is necessary. If grantees/subgrantees indicate the need for a “tall” tower, suggest use of several smaller towers less than 200 feet AGL, unguyed and unlit, provided they meet the communication and coverage needs.
 3. Avoid or minimize, to the extent practicable, negative impacts on migratory birds and their habitats by proposed actions, in compliance with and/or supporting the intent of the MBTA, EO 13186, Bald and Golden Eagle Protection Act (BGEPA), ESA, NEPA, and other applicable statutes and Executive Orders.

4. Assess and estimate the effects of proposed actions on migratory birds, with emphasis on species of concern and their habitats, through the NEPA process. Use best available demographic, population, and habitat data in the assessment of effects upon migratory birds. If sufficient data are unavailable, acquire necessary data by working with Federal, State, and other partners.

FEMA and its grantees/subgrantees shall comply with all necessary provisions of NEPA, as well as provisions pertinent to the ESA (Section 7) and any other pertinent Federal environmental compliance review processes, in addition to any site/project-specific conditions that result from these environmental review processes and consultation with resource and regulatory agencies.

The following protocols for project documentation (including NEPA documentation), consultation, monitoring, and evaluating cumulative impacts shall be followed:

- a. For projects that fully meet the FWS recommendations, no consultation between FEMA and FWS shall be necessary. However, FEMA will share copies of any completed Tower Site Evaluation Forms (see below) with the appropriate FWS Ecological Services Field Office and Division of Migratory Bird Management office.
- b. For all new towers and modifications to existing towers the following requirements shall apply:
 - i. The grantee/subgrantee shall submit a Tower Site Evaluation Form (available at http://www.fws.gov/habitatconservation/TOWER_SITE_EVALUATION_FORM.pdf) to FEMA as part of its overall grant application or project scope of work. The form must be prepared by a qualified environmental professional. FEMA shall verify the accuracy of the information and submit the form to the FWS Ecological Services Field Office nearest to the proposed tower location with a copy to the Division of Migratory Bird Management.
 - ii. If FWS determines that the proposed tower design and/or location will have adverse impacts to migratory birds and those impacts cannot be adequately mitigated through changing the project scope, FEMA shall prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), depending on the significance of the impacts. If multiple towers are to be located in a certain ecotype, BCR, or specific habitat type where impacts to migratory birds are imminent or have already been documented (e.g., based on previous studies on existing towers), FEMA will conduct a programmatic

review of the proposed towers and their locations in order to minimize potential impacts to migratory birds.

c. Monitoring:

- i. For grant-funded towers, FEMA shall require grantees/subgrantees to contact the appropriate local or regional FWS Migratory Bird Office for instructions on the proper collection and disposal of injured or dead birds and removal of nests. For FEMA-owned towers, FEMA shall contact the appropriate local or regional FWS Migratory Bird Office for such instructions.
- ii. For grant-funded towers, FEMA shall require grantees/subgrantees to allow FWS or its designees, upon request, access to tower sites to document avian mortalities and injuries, monitor bird behavior, assess lighting impacts on migratory birds, and conduct similar research. For FEMA-owned towers, FEMA will also allow such access, unless otherwise prohibited. Nothing in this section limits the authorization of a FWS law enforcement officer to access tower sites while in the performance of his/her job duties.
- iii. If a grant-funded or FEMA-owned tower is discovered to have adverse affects to migratory bird populations (i.e., greater than 10 bird kills per night), these towers must be reported immediately to the FWS.

d. Cumulative Impacts:

- i. FEMA shall work with FWS to develop a protocol for research initiatives focused on assessing cumulative impacts of towers on migratory birds.
5. Address, as appropriate, the potential introduction, establishment and spread of non-native plants and animals as a result of agency-funded projects. Information on invasive species management can be found on the FWS website: <http://www.fws.gov/invasives/>.
 6. Advise grantees/subgrantees to consult with the appropriate FWS Regional Migratory Bird Offices to determine whether permits for the take of migratory birds pursuant to requirements of 50 CFR §§ 10, 13, 21, and 22 are necessary. In situations where a permit is not available, these parties should seek concurrence from the FWS that the proposed conservation measures adequately address the goals of migratory bird conservation as described in F.1, above.
 7. Advise the public of this MOU through a notice published in the Federal Register and distribute the MOU within FEMA.

G. Obligations of FWS

The following activities will be coordinated through the appropriate FWS Migratory Bird Program, Ecological Services, and Endangered Species offices.

1. When requested, and as information is available, assist in identifying important migratory bird areas and habitats (e.g., migration corridors and staging, wintering, nesting, brood-rearing, and foraging habitats) that the FEMA should evaluate in its environmental reviews.
2. Keep FEMA informed of any bird conservation updates or changes in policy that might affect FEMA-funded projects by providing information on:
 - a. Changes to the MBTA and its regulations and procedures or other acts and their regulations affecting management of migratory birds.
 - b. Population trends of species that might be affected.
 - c. Changes to the lists of Species of Concern (published in Birds of Conservation Concern) or threatened and endangered species, or the birds covered under the MBTA.
 - d. Changes in, updates to, or additions to national and regional bird conservation plans (e.g., Partners in Flight Bird Conservation Plan, United States Shorebird Conservation Plan, North American Waterbird Conservation Plan, or the North American Waterfowl Management Plan).
 - e. Protection measures for reducing human-caused bird mortality that may be applicable to FEMA activities, as new information becomes available.
3. Upon request, make available to FEMA for incorporation into environmental analyses any FWS data relevant to evaluating the potential impacts of communication towers and associated infrastructures on migratory birds and their habitats. This includes information on migratory bird populations, abundance, distribution, status, habitat needs, and contaminants. If adequate data are not available, FWS may help FEMA identify studies to evaluate the potential impacts of FEMA actions on migratory birds and their habitats.
4. Conduct informational and educational programs oriented toward migratory bird conservation and, upon request, provide literature or information for FEMA's outreach initiatives.
5. As early as practicable, but ideally within a 30 day window of receipt, review and

provide comments on FEMA Tower Site Evaluation Forms or NEPA documents and management actions on how to avoid, minimize or compensate for unavoidable adverse impacts resulting from activities associated with construction and operation of FEMA-funded communication towers to better ensure appropriate protection for migratory birds.

H. Definitions

Birds of Conservation Concern - published by the FWS Division of Migratory Bird Management, refers to the list of nongame birds, gamebirds without hunting seasons, subsistence-hunted nongame birds in Alaska and ESA candidate, proposed endangered or threatened, and recently delisted species in the United States in its entirety, including island “territories” in the Pacific and Caribbean. The overall goal of this list is to identify the migratory and non-migratory bird species that represent the FWS’s highest conservation priorities. The most current version of the list, Birds of Conservation Concern 2008, is available at <http://www.fws.gov/migratorybirds/>.

Migratory Bird - an individual of any species protected by the MBTA. A list of migratory birds can be found in 50 CFR § 10.13 or <http://www.fws.gov/migratorybirds/>.

Mitigation – For NEPA purposes, mitigation includes (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments (from 40 CFR, Section 1508.20, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act).

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

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

National Environmental Policy Act (NEPA) - the law that requires Federal agencies prepare a detailed analysis of the environmental impacts of their proposed action with alternatives and to include public involvement for major federal actions significantly affecting the quality of the human environment.

Partners in Flight (PIF) - a collaborative effort of more than 300 partners, including Federal and State government agencies, non-governmental organizations, conservation groups, foundations, universities, and industry, focusing on the conservation of land birds (<http://www.partnersinflight.org>).

Species of Concern - refers to those species listed in the periodic report, Birds of Conservation Concern, published by the FWS Division of Migratory Bird Management (<http://www.fws.gov/migratorybirds>); priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, United States Shorebird Conservation Plan, Partners in Flight Bird Conservation Plans); species or populations of waterfowl identified as high or moderately high continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and MBTA-listed gamebirds below desired condition (<http://www.fws.gov/migratorybirds>).

Take – to pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to pursue, hunt, wound, kill, trap, capture or collect (50 CFR Section 10.12). The Executive Order further defines take to include intentional take, meaning take that is the purpose of the activity in question, and unintentional take, meaning take that results from, but is not the purpose of, the activity in question. Both intentional and unintentional take constitute take as defined by the regulation.

United States Shorebird Conservation Plan (USSCP) - an international effort undertaken by a partnership of Federal, State, and Provincial government agencies, non-governmental organizations, and private entities to promote stable and self-sustaining populations of all shorebird species. The plan provides a scientific framework to determine species, sites, and habitats that most urgently need conservation action (<http://www.fws.gov/shorebirdplan/>).

I. Dispute Resolution

Prevention of potential conflicts or resolutions of actual disagreements between the Parties will be attempted first at staff levels and elevated through the respective organizational levels if necessary. Conflict prevention or traditional Alternative Dispute Resolution (ADR) processes will be used to achieve consensus. Collaborative processes, including informal meetings or negotiations, will be used to avoid or minimize a dispute. If 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 Regional offices. In the event that there is no resolution at that level within 30 days, the dispute may be elevated by either Party to the Washington D.C. office of each agency.

Representatives of both agencies shall agree to enter into a conflict-prevention

process using collaborative methods or to enter into a traditional ADR process, as appropriate.

J. Agreement

It is mutually agreed and understood that:

This MOU does not alter any Party's obligations or responsibilities under the authorities listed in Section B of this MOU or any other statute or other legal authority.

1. Either Party may terminate this MOU, in whole or in part, at any time by providing the other Party 30-days written notice to that effect.
2. Changes to this MOU shall be made in writing by mutual consent of both Parties, through an issuance of a written modification signed and dated by both Parties.
3. This MOU does not restrict either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
4. Documents furnished to a Party under this MOU may be subject to the Freedom of Information Act (FOIA, 5 U.S.C. § 552). A Party shall not release documents originating in the other Party to a FOIA requester. Rather, the Party shall forward such document(s) to the originating Party for review, determination, and response directly to the requester.
5. The MOU will not change or alter species conservation procedural requirements associated with the ESA or with agency-defined priority species. Each agency's responsibilities towards such species remain unchanged.
6. This MOU is neither a fiscal nor a funds-obligation document. Any endeavor involving reimbursement, contribution of funds, or other 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. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority.
7. Press releases prepared by either Party that reference this MOU, or the relationship established between the Parties of this MOU, shall have prior approval of both Parties.
8. The Parties shall schedule annual meetings at the headquarters level to review progress and identify opportunities for advancing the principles of this MOU.
9. This instrument in no way alters or takes the place of the respective Parties' requirements for conducting environmental analyses, including NEPA requirements.

10. This MOU does not require changes to current contracts, permits, or other third-party agreements. The MOU recognizes that the FEMA may not be able to implement some elements of the MOU until such time as the FEMA has successfully included them in formal planning processes.

11. This MOU is intended only to improve the internal management of the Executive Branch of the Federal Government and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

12. The principal contacts for this MOU are as follows:

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

Jomar Maldonado
Environmental Officer
Federal Emergency Management Agency
U.S. Department Homeland Security
1800 S. Bell Street, 7th Floor
Arlington, VA 20598-3020

K. Effective Date

This Memorandum of Understanding Between the Federal Emergency Management Agency and the United States Fish and Wildlife Service Regarding Implementation of Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” shall become effective as of the date the last Party duly executes it below.

Sam Hamilton
Director
U. S. Fish and Wildlife Service

[Insert FEMA signatory]

Date: _____

Date: _____