

Memorandum of Understanding
Between the U.S. Environmental Protection Agency Office of Pesticide Programs
and the Department of the Interior U.S. Fish and Wildlife Service
Regarding Implementation of Executive Order 13186,
“Responsibilities of Federal Agencies to Protect Migratory Birds”

This Memorandum of Understanding is entered into, by, and between the Office of Pesticide Programs at the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service, herein collectively referred to as the Parties.

A. Purpose

This Memorandum of Understanding (MOU) is entered into pursuant to Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds (66 FR 3853, January 17, 2001). The purpose of this MOU is to promote the conservation of migratory bird populations through enhanced collaboration between the Environmental Protection Agency’s (EPA) Office of Pesticide Programs (OPP) and the U.S. Fish and Wildlife Service (FWS) regarding actions directly carried out by OPP.

This MOU does not alter or waive any responsibilities of EPA or FWS, as applicable, under the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (Eagle Act), the Endangered Species Act (ESA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or any other statute, nor does it authorize the take of migratory birds. The Parties resolve to implement responsibilities and activities described herein to the extent permitted by law, subject to the availability of appropriations, within Administration budgetary limits, and in alignment with the Parties’ missions. In carrying out the activities described in this MOU, OPP does not intend or expect that OPP’s ability to meet its statutory deadlines for completing registration and re-evaluation decisions will be impacted.

B. Authority

The Parties’ responsibilities under this MOU are authorized by or consistent with the purpose of provisions of the following laws and other authorities available to the Parties:

- Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d);
- Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544);
- Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds (66 Fed. Reg. 3853, Jan. 17, 2001);
- Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*);
- Fish and Wildlife Act of 1956, amended (16 U.S.C. §§ 791a *et seq.*);
- Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. §§ 2901 *et seq.*);
- Fish and Wildlife Coordination Act of 1980, as amended (16 U.S.C. §§ 661 *et seq.*);
- Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. §§ 715 *et seq.*);
- Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712);

- National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347).

C. Missions of Both Parties

Office of Pesticide Programs

The mission of EPA is to protect human health and the environment. EPA is committed to ensuring that the American public has air that is safe to breathe, water that is clean and safe to drink, food that is safe to eat, and communities that are protected from toxic chemicals. Within the context of EPA's broad mission, OPP protects human health and safeguards the environment from potential risks associated with the use of pesticides.

The primary statutes regulating pesticide use in the United States are the FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). FIFRA gives EPA the authority to regulate the registration (licensing) and use of pesticides and FFDCA governs the establishment of tolerances (also known as maximum residue limits) on food and animal feed to ensure that human dietary exposures are safe. In order for a pesticide to be registered (licensed) under FIFRA, it must be demonstrated that the pesticide's use will not result in unreasonable adverse effects on the environment.

FIFRA provides EPA with authority to make pesticide regulatory decisions necessary to ensure the safe use of pesticides and to require any data the Agency determines are needed to reach those decisions. FIFRA also requires the periodic review of existing registrations to ensure pesticides continue to meet the most current scientific and regulatory standards. In connection with registration, EPA reviews and approves pesticide product labeling which, once approved, provides legally binding use instructions and limitations to ensure that use of the product will not result in unreasonable adverse effects to the environment EPA also is authorized by FIFRA to approve use of unregistered pesticides in emergency situations. Under certain circumstances, States are also authorized to issue State-specific registrations (known as Special Local Needs registrations) for additional uses of EPA registered pesticides to address pest problems within the State.

By controlling insect pests¹, plant diseases, and invasive species, pesticides can be beneficial for a variety of reasons, including (but not limited to) the following: increasing food production, controlling household pests, protecting rights-of-way, keeping waterways navigable, restoring native habitats, and protecting human health (*e.g.*, disease vector control). However, depending on their particular mode of action, pesticides may also be associated with risks to non-target organisms. Therefore, pursuant to its FIFRA responsibilities, before EPA registers a pesticide under FIFRA, OPP conducts ecological risk assessments to determine what potential risks to the environment are posed by various pesticides, and whether changes to the use or proposed use of such pesticides are necessary to protect the environment from unreasonable adverse effects. This standard of safety encompasses consideration of effects to migratory birds.

¹ "The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) [of FIFRA]." 7 U.S.C. § 136(t).

In addition, under the ESA, OPP considers the potential impacts of pesticides on the species listed as endangered or threatened by the FWS and National Marine Fisheries Service (NMFS) and on any designated critical habitat for those species. OPP is required to consult with the FWS and/or NMFS on an action if OPP determines that use of a pesticide “may affect” a listed species or designated critical habitat.

OPP works with the U.S. Department of Agriculture to implement research, demonstration, and education programs to support nationwide adoption of Integrated Pest Management (IPM). OPP assists FWS and other Federal agencies in applying IPM techniques and approaches for pest management activities and supports efforts to promote IPM through Federal procurement and regulatory policies. To achieve such broad collaboration and coordination on advancing IPM techniques and policies, OPP participates in the meetings and program activities of the Federal IPM Coordinating Committee. As resources allow, OPP awards financial assistance agreements for demonstrating and implementing the use of IPM in agricultural and non-agricultural settings, especially as a means for reducing the risk of pesticides.

In addition to its regulatory functions, OPP promotes a variety of partnerships related to pesticide use, including the Pesticide Environmental Stewardship Program (PESP), a voluntary private and public partnership dedicated to reducing pesticide use and risk, and the IPM in Schools Program.

Fish and Wildlife Service

As a Federal agency within the U.S. Department of the Interior, 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 includes responsibilities for managing migratory bird populations, domestic and international coordination, and the development and enforcement of regulations² that govern authorized take of migratory birds. The Migratory Bird Conservation Act established the Migratory Bird Conservation Commission to approve land to be acquired with Migratory Bird Conservation Funds. The Fish and Wildlife Coordination Act requires consultation under certain circumstances and added provisions to recognize the important contribution of wildlife resources

² Under the MBTA it is "unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof"; however, "the Secretary of the Interior is authorized and directed, from time to time, ... to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof."

to the Nation and to require equal consideration and coordination of wildlife conservation including habitat protection, through acquisition, enhancement, and/or management and avoidance and minimization of adverse impacts related to federal activities.

FWS programs that involve bird conservation activities include:

1. The Division of Migratory Bird Management and the Regional Migratory Bird Programs 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 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 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 coordination.
4. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA, Eagle Act, ESA, and other laws pertaining to migratory bird conservation.
5. The National Wildlife Refuge System manages National Wildlife Refuges (NWRs) and Waterfowl Production Areas across the country, many of which were established to protect and conserve migratory birds. NWRs not only protect important bird habitat, but also focus on monitoring migratory bird populations and restoring and maintaining native habitats.
6. 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 conservation actions to protect fish and wildlife, including migratory birds. They facilitate regional self-directed science management partnerships called Landscape Conservation Cooperatives to develop and apply shared science capacity to conservation.

D. Statement of Mutual Interest and Benefit

When used properly, pesticides provide societal benefits such as controlling disease-causing organisms and fostering a safe and abundant food supply. The Parties have a common interest, however, in ensuring that pesticide use is also consistent with the proper conservation and management of America's natural resources. The Parties agree that migratory birds are important components of biological diversity and that conservation of migratory birds and their

habitats helps sustain ecological integrity, contributes to public conservation education, and enhances the growing interest in outdoor recreation opportunities. Further, the Parties mutually agree that it is important to: 1) conserve migratory bird populations and their habitats; 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 bird populations may have short-term impacts to individual birds.

E. Responsibilities of Both Parties

To the extent permitted by law, subject to the availability of appropriations, within administration budgetary limits, and in alignment with OPP and FWS missions and capabilities, both Parties resolve to:

1. Support the conservation intent of Executive Order 13186, and the migratory bird conventions by: a) integrating bird conservation principles, measures, and practices into agency planning and actions; b) avoiding or minimizing the take of migratory birds and adverse effects on their habitats; and c) preventing or abating pollution detrimental to migratory birds and their habitats.
2. FWS will provide available information on the economic, societal, and environmental benefits of migratory birds to OPP for its consideration in risk management decisions related to pesticide registrations.
3. Identify where legal use of registered pesticides in the United States is resulting in, or is likely to result in impacts to individual birds and their habitats, and work cooperatively to promote research and information exchange that results in the avoidance or minimization of take and other impacts, increased migratory bird conservation, and restored or enhanced migratory bird habitat.
4. Improve post-registration evaluation of pesticide effects on migratory birds by:
 - a. Working collaboratively to improve incident reporting to and between OPP and FWS through increased cross-agency communication and external outreach to stakeholders, using web-based information and reporting tools.
 - b. Improving mechanisms and seeking funding opportunities for testing bird carcasses for pesticide poisoning via partnerships with Federal Agencies, States, Universities, and NGOs, where resources permit.
5. Provide training and information on the MBTA, migratory birds and their habitats (*e.g.*, workshops, outreach materials, web-based training) to appropriate agency staff. This includes developing and sponsoring training regarding:
 - a. Responsibilities under the MBTA and Eagle Act.
 - b. Current information on the biology and ecology of bird species of concern.

- c. Conservation actions that avoid or minimize the creation of avian stressors on migratory bird species, including nesting, rearing, feeding, migration, or overwintering populations and their habitats.
6. Work cooperatively to identify conservation measures that minimize pesticide exposure to migratory birds.
7. Develop and implement a process that ensures an efficient method of making FWS aware of new applications involving avicides and rodenticides (e.g., via letter, e-mail, telephone call, or the following website: <http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions>).
8. Participate annually, as practicable, in the interagency Council for the Conservation of Migratory Birds to share information leading to the conservation of migratory birds. The duties of the Council include the following:
 - a. Sharing the latest resource information (e.g., conservation measures, data, etc.) to assist in the conservation and management of migratory birds.
 - b. Fostering partnerships to further the goals of Executive Order 13186.
 - c. Reporting annually on the accomplishments and recommendations related to 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. Responsibilities of OPP

Within the context of existing programs of pesticide registration and registration review, which includes conducting ecological risk assessments that address migratory birds, OPP will integrate migratory bird conservation measures into OPP activities to the extent practicable and consistent with all legal requirements when conducting its reviews. OPP will:

1. Continue to evaluate the potential effects of pesticides on migratory birds in its risk assessment and risk management decisions, with emphasis on taxa that include Birds of Conservation Concern and other species of concern.
2. Continue and improve upon its use of pesticide ecological incident data in ecological risk assessments as part of a weight-of-evidence approach in making risk conclusions.
 - a. FIFRA 6(a)(2) requirements stipulate that known adverse effects related to a pesticide, including pesticide ecological incidents, must be reported to OPP by the

registrant of the pesticide (*i.e.*, pesticide companies are required by law to report known pesticide incidents involving their pesticide active ingredient(s) to OPP).

- b. Reporting of ecological incidents for non-registrants is voluntary. Therefore, the Agency will continue to promote the reporting of pesticide ecological incidents by non-registrants (*e.g.*, continue to promote the use of the National Pesticide Information Center web portal <http://www.npic.orst.edu/> for reporting pesticide-related ecological incidents; continue with the OPP Incident Workgroup that was set up to improve incident reporting).
3. Incorporate best available data (including those on birds) in pesticide risk assessments conducted for registration review as part of the weight-of-evidence approach when making risk conclusions.
4. Consistent with the requirements of 40 CFR §156.85, work to ensure that bird-hazard language appears on all labels, when appropriate. OPP will post examples of bird-hazard language on a webpage dedicated to EPA's activities related to pesticides and migratory birds.
5. 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.
 - a. OPP will continue to work with national and international partners to protect pollinating migratory birds through regulatory, voluntary, education, and research programs.
 - b. Under the auspices of the Risk Reduction Steering Group, Organization for Economic Co-operation and Development Working Group on Pesticides, and the North American Free Trade Agreement Technical Working Group, OPP will enhance awareness of migratory bird issues and maintain its support of information sharing and technical assistance to other industrialized countries on IPM techniques and approaches as strategic options for reducing the risks of pesticides on the environment and wildlife.
6. Work collaboratively with FWS to obtain pertinent biological information on life histories, and ecological and behavior patterns of migratory birds that will help inform OPP ecological risk assessments and potential limitations on pesticide product use.
7. Work collaboratively with other EPA offices on rules, permits, enforcement actions, and policies that promote and enhance the protection of migratory birds as appropriate.
8. Work with non-federal entities to further bird conservation where appropriate. OPP will:

- a. Promote and support the PESP, an EPA partnership program that works with the nation's pesticide-user community to further IPM practices and other actions to promote the safe use of pesticides. To participate in the program, both agricultural and non-agricultural PESP members commit to goal-oriented strategies to focus voluntary efforts, including in some cases, specific actions to conserve and protect natural resources, while reducing pests and the risks of pesticides.
 - b. Work with non-federal partners engaged in bird conservation on sharing information on birds and pesticides.
 - c. Attend bird conservation meetings to promote information exchange and relationship building with our Federal and non-Federal partners on issues related to migratory bird conservation.
9. Review and improve, as appropriate, OPP's education and outreach on the impacts of pesticide use on migratory birds; and, where warranted, seek to improve the quality and clarity of label language during the registration review process to inform users of potential risks associated with a product's use.
10. Work with the FWS to develop and provide training to scientific staff, risk managers, and management on the conservation of migratory birds as it relates to pesticide use and registrations.
11. Develop and maintain a webpage devoted to information on the effects of pesticide use by professional pest-control services and agricultural applicators, and homeowners on migratory birds that will include copies of Executive Order 13186, the signed MBTA MOU, training and educational materials intended to advance migratory bird conservation consistent with the objectives of the Executive Order 13186, conservation measures intended to reduce or eliminate take, examples of bird-hazard language for pesticide product labels, and links to other sites with pertinent bird and pesticide information.
12. In accordance with existing process³, OPP will:
 - a. Notify and Confer with FWS, as appropriate and specified in the process that will be developed under E(7) above, in seeking implementation of appropriate label language to reduce risk of migratory bird mortalities from pesticide products, with particular emphasis on avicidal and

³ EPA's Pesticide Program began implementing a public-participation process for certain registration actions in October 2009. The public-participation process for registration actions provides a meaningful opportunity for the public to comment on major registration decisions at a point in the registration process when comprehensive information and analysis are available. The Agency generally uses the outlined public-participation process for the following types of applications: new active ingredients; first food use, first outdoor use; first residential use; and other actions of significant interest.

- rodenticide products. Note that the commitment to further develop that process is explained earlier in the MOU under obligations to both parties;
- b. Inform users of the need to discuss with FWS any necessary migratory bird permits and comply with permit terms and conditions during bird-management actions using avicidal products, when appropriate, and
 - c. Encourage the development of less toxic alternatives to avicides and rodenticides (e.g., via the agency's IPM programs).
13. In considering whether to require label language to reduce potential risks to migratory birds, OPP will seek public comment on such proposed regulatory decisions, consistent with its public participation policies for registration and registration review decision-making.
 14. Encourage pesticide users to employ IPM techniques and approaches and "best management practices" that reduce exposure of chemicals in the environment through, for example, EPA partnership programs, such as PestWise. PestWise summarizes the various voluntary and grant-giving programs in which OPP works collaboratively with companies, non-profit organizations, communities, and individuals to promote environmental stewardship. The promotion of environmental stewardship is done through information exchange, education and promotion, technical assistance, and funding and grant opportunities, as resources permit.
 15. If through this MOU any significant change in pesticide risk-assessment methodology for migratory birds is proposed, EPA, in consultation with FWS, may convene a FIFRA Scientific Advisory Panel review, which includes public comment, before any proposed methodology would be implemented.
 16. Provide the public with notification of the availability of this MOU through a notice published in the *Federal Register*.

G. Responsibilities of FWS

FWS agrees to implement the commitments made in this MOU in each of its program areas where applicable to the extent permitted by law and in alignment with agency missions, and subject to the availability of appropriations. FWS resolves to:

1. Provide OPP with technical information to assist in identifying avian stressors and conservation measures and practices for alleviating these stressors, for consideration in OPP's decision-making processes. This assistance may aid OPP in its pesticide regulatory decisions to promote the conservation of migratory bird species and their habitat.
2. Work collaboratively toward developing and providing OPP with species-specific information for Birds of Conservation Concern for use in developing and refining OPP ecological risk assessments as they relate to migratory birds and their habitat.

3. Continue to cooperate and coordinate with other Federal agencies, State agencies, universities, Tribes, and independent non-governmental organizations to develop and conduct surveys that provide reliable information on the distribution, status, and trends of migratory bird populations on national and/or regional scales. FWS intends to make existing information available in a timely manner to aid OPP in assessing impacts of pesticides to migratory birds. This includes updating the FWS Birds of Conservation Concern at five-year intervals.
4. Assist EPA in making informed pesticide registration decisions, by providing bird mortality incident data to EPA OPP in a timely manner, as appropriate. This includes the development of a FWS-wide process to facilitate efficient exchange of mortality incident data to OPP.
 - a. Develop a mechanism to exchange mortality data between FWS Contaminants and Avian Health and Disease groups as well as disease and forensic laboratories.
 - b. Promote and provide opportunities for hypothesis-driven field research with partners to investigate acute and chronic impacts of pesticides on avian immunity and population health
5. Conduct informational and educational programs (e.g., webinars) oriented toward migratory bird conservation, including habitat restoration.
6. Continue to maintain a permits web page that provides links to all FWS offices responsible for issuing permits for intentional take of migratory birds. Identify mechanisms, alternate approaches, or other activities that would reduce or eliminate take, or advance migratory bird conservation consistent with the objectives of Executive Order 13186.
7. Inform OPP of any new FWS regulation or policy associated with take of migratory birds. This includes providing training on such regulations or policies, when practicable.
8. Increase opportunities for FWS staff to obtain training on the effects of pesticides to fish and wildlife resources.

H. 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 processes will be used to strive 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 Party should be put in writing and attempts to resolve the matter between EPA and Field level FWS employees should occur within 30 days after receipt of written notice. If there is no resolution at this level within 30 days, FWS may elevate the issue to the appropriate officials at Regional offices. Note, EPA Regional offices are not involved in pesticide licensing. In the event that there is no resolution at that level within 30 days, the dispute may be elevated by FWS to its Washington, D.C. office.

I. Agreement

1. This MOU itself does not alter, expand, or substitute for provisions of existing laws or regulations, nor is it a regulation itself. It does not impose legally-binding requirements on the participating agencies, States, Tribes, local governments or the regulated community. This MOU is intended to provide internal procedural guidance to Federal agency staff to assist them in carrying out their activities.
2. This MOU may be revised for non-substantive and or minor changes or corrections (e.g., misspellings, incorrect references, corrections/updates to EPA or FWS offices or program titles, and updating of principle points of contact upon an email request by the principle point of contact representing either Party and a subsequent email indicating concurrence of the other principle point of contact. This MOU may be extended, or amended for substantive changes upon written (e.g., memo) request of either Party or the subsequent written concurrence of the other Party. Either Party may terminate this MOU, in whole, or in part, at any time by providing the other Party a 30 days written notice 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. This MOU in no way alters any applicable requirements on either party to conduct or review environmental analyses, including those relating to NEPA requirements, where appropriate.
5. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. 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. This MOU does not provide such 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.
6. Any press releases developed and intended to be issued for the express purpose of highlighting this MOU or the relationship established between the Parties as a result of this MOU are subject to prior approval of both Parties.
7. OPP and FWS will meet periodically to review the implementation of the MOU and evaluate its effectiveness, as well as identifying opportunities for promoting conservation of migratory bird populations.

8. This MOU does not require changes to current contracts, permits, or other third agency agreements.

9. 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 any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

10. This MOU will not be construed as an admission of liability.

J. Definitions

Action – For purposes of this MOU only, a program, activity, project, official policy, rule, regulation or formal plan directly carried out by a Federal agency.

Birds of Conservation Concern – a list that is published and periodically updated by the FWS Division of Migratory Bird Management intended to identify the migratory and non-migratory bird species that-- in addition to species already listed under the ESA, proposed or candidate-- represent the FWS's highest conservation priorities, including ESA candidate species. The most current version of the list, Birds of Conservation Concern 2008, is available at <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BirdManagement.html> .

Conservation measures - measures to avoid impacts completely, or where avoidance is not practicable, minimize impacts, reduce or eliminate the impact over time, or compensate for impacts to the extent feasible and within the Parties capabilities and authorities.

Migratory bird – an individual of any species protected by the MBTA; a list of protected migratory bird species can be found in 50 C.F.R. § 10.13.

Migratory Bird Permits - The MBTA makes it illegal for anyone to take, possess, or import any migratory bird, or parts, nests, or eggs except under the terms of a valid permit issued pursuant to Federal regulations. As authorized by the MBTA, the FWS issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (including rehabilitation, educational, migratory-game-bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. Migratory bird permit policy is developed by the [Division of Migratory Bird Management](#) and the permits themselves are issued by the [Regional Migratory Bird Permit Offices](#). The regulations governing migratory bird permits can be found in 50 C.F.R. part 13 ([General Permit Procedures](#)), 50 C.F.R. part 21 ([Migratory Bird Permits](#)), and 50 C.F.R. part 22 ([Eagle Permits](#)).

Pesticide - Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Though often misunderstood to refer only to insecticides, the term pesticide also applies to herbicides, fungicides, and various other substances used to control pests. Under United States law, a pesticide is also any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Species of Concern – refers to several categories of birds including: 1) species listed in the periodic report, *Birds of Conservation Concern*, published by the FWS Division of Migratory Bird Management (www.fws.gov/migratorybirds); 2) priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, United States Shorebird Conservation Plan, Partners in Flight Bird Conservation Plans); 3) species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; 4) listed threatened and endangered bird species in 50 CFR § 17.11; and 5) MBTA-listed gamebirds of management concern, as listed in the *Birds of Management Concern* list

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BirdManagement.html>

Stressor – any chemical or non-chemical alteration or addition to the environment that when introduced to a resource contributes to a threat to bird populations or individuals.

Take – to pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to pursue, hunt, wound, kill, trap, capture or collect (50 C.F.R. § 10.12). The Executive Order further defines “take” to include intentional take, meaning take that is the purpose of the activity in question, and incidental take, meaning take that results from, but is not the purpose of, the activity in question. The regulations implementing the Eagle Act define take to mean “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” bald and golden eagles (50 C.F.R. § 22.3). The term “disturb” is, in turn, defined as to agitate or bother to a degree that causes, or is likely to cause, injury, decrease in productivity, or nest abandonment.

Unreasonable Adverse Effects - As defined in Section 2(bb) of FIFRA, “the term ‘unreasonable adverse effects on the environment’ means (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 346a). The Administrator shall consider the risks and benefits of public health pesticides separate from the risks and benefits of other pesticides. In weighing any regulatory action concerning a public health pesticide under this act, the Administrator shall weigh any risks of the pesticide against the health risks such as the diseases transmitted by the vector to be controlled by the pesticide.” 7 U.S.C. § 136(bb).

The principal contacts for this MOU are as follows:

Rick Keigwin, Deputy Director for Programs
Office of Pesticide Programs
U.S. Environmental Protection Agency

Brad Bortner, Chief
Division of Migratory Bird Management
U.S. Fish and Wildlife Service

This MOU is executed as of the last date signed below and expires no later than five (5) years thereafter, at which time it is subject to review and renewal, or expiration.

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

Jack E. Housenger, Director
Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460


Date 11/4/12

Dan Ashe, Director
U.S. Fish and Wildlife Service
Department of Interior
1849 C Street, NW
Washington, DC 20240


Date 11/28/12

Deputy Director