

Memorandum of Understanding
between the
Bureau of Ocean Energy Management,
Bureau of Safety and Environmental Enforcement,
and
U.S. Fish and Wildlife Service

I. Purpose.

This memorandum of understanding (MOU) is entered into between the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the U.S. Fish and Wildlife Service (USFWS), all of which are agencies within the U.S. Department of the Interior (DOI).

BOEM, BSEE, and USFWS, collectively referred to as the Parties, have entered into this MOU to ensure effective implementation of Executive Order (EO) 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds* (66 FR 3853, 17 January 2001). This EO directs executive departments and agencies to take certain actions in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703–712), the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668–668d), the Endangered Species Act of 1973 (16 U.S.C. §§ 1531–1544), the National Environment Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321–4347), and other pertinent statutes. Specifically, section 3 of this EO calls on all Federal agencies that take actions that may have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement a MOU (including specific requirements) with USFWS that will promote the conservation of migratory bird populations. In furtherance of this task, the Parties commit to cooperate with each other, identify areas that warrant special attention for shared efforts, and specify mechanisms for cooperation. This MOU does not waive legal requirements under the MBTA or any other statute or convention and does not authorize the take of migratory birds.

II. Background.

On June 4, 2009, the Minerals Management Service (MMS) and USFWS entered into an MOU to meet the requirements of EO 13186 and to strengthen migratory bird conservation through enhanced collaboration between MMS and USFWS. The 2009 MOU expired on June 4, 2014, and has not been renewed. This MOU replaces the expired 2009 MOU and addresses the separation of MMS into BOEM and BSEE and their associated responsibilities.

III. Missions of the Parties

BOEM

BOEM manages the development of the Nation’s energy, mineral, and geological resources on the Outer Continental Shelf (OCS) in an environmentally and economically

responsible way. These resources include oil and gas; wind, wave, and current energy; sand, gravel, and other marine minerals; and use of offshore geological structures for sequestration of carbon dioxide. Environmental stewardship is at the core of BOEM's mission.

BSEE

BSEE works to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement. BSEE regulates compliance with environmental and safety standards through regular inspections and other monitoring activities. BSEE recognizes the importance of the OCS to America's energy portfolio and promotes diligent and responsible exploration, development, production, and transportation of offshore energy. BSEE advances environmental stewardship through the dedicated work of qualified and trained personnel who work collaboratively across regions and programs to integrate prevention, compliance, and preparedness activities.

USFWS

As a Federal agency within DOI, the mission of the USFWS 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 USFWS 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 USFWS 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 that govern the take of migratory birds. The Migratory Bird Conservation Act and the Fish and Wildlife Coordination Act mandate migratory bird habitat conservation, protection through acquisition, enhancement, and management to avoid and minimize adverse impacts to migratory birds.

IV. Authorities.

The Federal statutes relevant to this MOU include, but are not limited to, the following:

- Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703–712) and the associated bilateral bird conservation treaties with Canada, Mexico, Russia, and Japan;
- Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. §§ 715–715s);
- National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321–4347);
- Bald and Golden Eagle Protection Act of 1940 (Eagle Protection Act), as amended (16 U.S.C. §§ 668–668d);
- Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. §§ 1531–1544);

- Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended (43 U.S.C. §§ 1331–1356c);
- Submerged Lands Act of 1953 (43 U.S.C. §§ 1301–1315);
- Coastal Zone Management Act (CZMA), as amended (16 U.S.C. §§ 1451–1468);
- Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. §§ 1251–1389);
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. §§ 742a–742k);
- Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. §§ 2901–2912);
- Fish and Wildlife Improvement Act of 1978, as amended (16 U.S.C. § 7421);
- Clean Air Act of 1963, as amended (42 U.S.C. §§ 7401–7675);
- Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. §§ 1701–1759);
and
- Oil Pollution Act of 1990 (33 U.S.C. §§ 2701–2762).

V. Procedures and Responsibilities.

The Parties will cooperate to implement the requirements of section 3 of EO 13186 and generally to further the conservation of migratory bird resources as defined in the EO. This may include, but is not limited to, the development of protocols for implementation of this MOU and for reporting accomplishments. The Parties will identify and pursue cooperative projects and programs they consider beneficial for the purposes of implementation of this MOU’s provisions, and collaborate with other Federal, State, Tribal, and non-governmental partners when appropriate.

Section 2(e) of EO 13186 defines “migratory bird resources” to mean “migratory birds and the habitats upon which they depend.” For purposes of this MOU, migratory bird resources include, but are not limited to, migration, nesting, foraging, staging, and wintering habitats upon which migratory birds depend that are either found on the OCS or found elsewhere, in the case of migratory birds that occur on the OCS at some times and places. Adverse effects to migratory bird resources include, but are not limited to, incidental take of migratory birds through collisions with structures and vessels; migratory bird habitat loss or degradation, including displacement from habitat because of changes in the distribution and abundance of forage resources; invasive species; and negative effects on migratory birds and their resources from climate change, pollution (including artificial nighttime lighting, oil spills, plastics and other debris, and direct and indirect air emissions), and anthropogenic causes generally.

A. BOEM Responsibilities

- a. Evaluating potentially significant impacts of actions authorized by BOEM, including authorization of third-party activities, on migratory bird resources, with emphasis on species of concern, including impacts on the economic and

recreational values of those resources, in environmental-impact analyses under NEPA or other applicable laws. Evaluation should include identifying any important gaps in available information. Evaluation may lead to inclusion of appropriate stipulations or conditions in leases, permits, or plans to avoid, minimize, or otherwise mitigate adverse effects to migratory bird resources (mitigation measures), including monitoring and sharing monitoring information. As part of analyses under NEPA, BOEM will advise entities that it regulates or funds, or whose activities it authorizes, to contact the USFWS to: identify Beneficial Practices or Best Management Practices (BMPs) that avoid, minimize, or otherwise mitigate adverse effects to migratory bird resources; evaluate if activities associated with the regulation, funding, or authorizations may take migratory birds; and to determine if permits for take of migratory birds are required or recommended.

- b. Providing training, capacity-building, and assistance for developing methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat.
 - c. In agency plans and planning processes, identifying which agency actions are more likely to adversely affect migratory bird resources, with emphasis on species of concern, including the incidental take of birds, and incorporating research and monitoring, migratory-bird-habitat and population-conservation principles, conservation measures, and BMPs. This includes early planning and implementing actions to protect, restore, and enhance migratory bird resources that BOEM and BSEE activities may adversely affect.
 - d. Within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensuring that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts.
- B. BSEE Responsibilities
- a. Monitoring and enforcing compliance with mitigation measures imposed as conditions for activities authorized under the OCSLA, reporting to BOEM and the USFWS on the effectiveness of implementation of the measures employed on the OCS, and providing recommendations for modifications or additions to these measures when necessary.
 - b. Assisting and coordinating, as feasible, with USFWS on avoidance and minimization measures included with any incidental take authorizations issued pursuant to the MBTA implementing regulations.
- C. USFWS Responsibilities
- a. Working with BOEM to provide recommendations to avoid or minimize adverse effects on migratory bird resources from BOEM or BSEE actions, including

- BMPs that BOEM could programmatically adopt to address migratory bird issues and reduce negative effects on migratory birds and their habitats.
- b. Maintaining a website on permits that provides links to all offices responsible for issuing permits (including ePermits), and permit application forms for take of migratory birds.
 - c. Providing essential background information to BOEM when requested, or through online tools, such as the [Avian Knowledge Network \(AKN\)](#), [Information Planning, and Consultation \(IPaC\)](#), and [Rapid Avian Information Locator \(RAIL\)](#) to ensure sound management decisions. This may include information about:
 - i. Migratory bird distributions, status, key habitats, conservation guidelines, and risk factors within each Bird Conservation Region.
 - ii. Changes to the MBTA and its regulations and procedures or other Acts and their regulations that may affect management of migratory birds.
 - iii. Population trends of species that BOEM's activities may affect.
 - iv. Current BMPs for reducing human-caused bird mortality that may be applicable to BOEM's activities.
 - v. New guidance documents, tools, and job aids designed to improve understanding of MBTA requirements and further the ability of BOEM to promote the conservation of migratory birds.
 - d. Updating the USFWS publication of Birds of Conservation Concern at regular intervals for reliable reference.
 - e. Working to identify important migratory bird habitats and the ecological conditions important to them to aid in collaborative planning. Important habitats include, but are not limited to, migration corridors and staging grounds, habitats for nesting, brood-rearing, stop-over, wintering, and foraging areas on or adjacent to the OCS.
 - f. Providing technical assistance to BOEM and BSEE on migratory bird species and their habitats through IPaC or RAIL, or through the appropriate Regional Migratory Bird office.
 - g. Providing technical assistance through the appropriate USFWS Ecological Services Field office for avoiding and minimizing project-related effects on migratory birds and their habitats resulting from BOEM authorized actions.
 - h. Providing opportunities for training on migratory bird inventory, management, and monitoring methods and BMPs for migratory birds and their habitats. This includes:
 - i. Developing or sponsoring training regarding measures and BMPs that avoid detrimental impacts to migratory bird species, including the habitats and conditions specified above in paragraph (e).
 - ii. Developing or sponsoring training regarding implementation of national protocols approved or adopted by the Service for determining habitat

conditions and bird population status and trends, and studies for evaluating the effects of activities on migratory birds and their habitats.

- iii. Developing or sponsoring training regarding habitat restoration.
- i. Reviewing and commenting on NEPA documents and other planning documents forwarded by BOEM. When appropriate, due to special expertise, joining as a cooperating agency for preparation of NEPA documents.
- j. Developing resources to educate agency staff on bird conservation measures that they can use at home and in the office (e.g., flyers, newsletter language).

D. BOEM, BSEE, and USFWS Shared Responsibilities

- a. Collaborating on research, monitoring, and management applications and development of BMPs related to the conservation and management of migratory bird resources, such as population inventory and monitoring, collection and assessment of information on environmental contaminants, and information on other physical or biological stressors and effects of stressors.
- b. Timely sharing of information with Federal and non-Federal entities that are repositories of migratory-bird-resource information, particularly information that is federally financed, including tools such as the AKN or IPaC, or other tools BOEM or BSEE have developed to implement environmental laws.
- c. Addressing changing landscapes, changes to bird habitats, prey densities, and bird populations related to changing disturbance regimes, changing sea levels, extreme weather events, and wildfires. Using available tools and integrating related plans and approaches when applicable and possible (e.g., the Resist-Accept-Direct decision framework).
- d. Providing educational programs and exhibits for BOEM and BSEE employees and for the public at large that recognize and promote economic and recreational values of birds, highlight issues threatening bird conservation, and identify actions that can be taken to reduce adverse effects to birds, such as actions to:
 - i. Encourage recycling and reduce the use of single-use plastics to avoid marine debris harmful to birds and other wildlife, and encourage the use of bird-friendly products (e.g., bird-friendly coffee);
 - ii. Reduce bird attraction and collision with facilities (e.g., reduce lighting, retrofit existing glass, and develop bird-collision monitoring programs);
 - iii. Increase awareness about human-introduced terrestrial predators to natural habitats; and
 - iv. Reduce fuel costs, carbon footprint, and the risks of climate changes on birds by promoting carpooling, biking, or using public transportation.
- e. Developing external communications, including publications and other outreach to stakeholders, and establishing partnerships with Federal and non-Federal entities to further migratory bird conservation, including multi-stakeholder research collaboratives.

- f. Providing staff exchanges and appointments for collaboration and cross-training on migratory bird conservation.
- g. Meeting jointly, at least annually, to discuss the operational aspects of this MOU, report accomplishments, and to identify whether any additional agreements (e.g., annexes) are needed under the MOU.

VI. Administration and Designated Staff Contacts.

This MOU will be administered by BOEM's Office of Environmental Programs, BSEE's Environmental Compliance Division, and USFWS' Migratory Bird Program Division of Bird Conservation, Permits, and Regulations. These Points of Contact are listed in Appendix 1 of the MOU and may be updated by any Party without further review.

VII. Limitations.

- a. Nothing in this MOU is intended to alter, limit, or expand the authority of any Party.
- b. Nothing in this MOU limits informal contact between the Parties.
- c. This MOU is to be implemented in full compliance with all applicable laws.
- d. Nothing in this MOU may be construed to obligate BSEE, BOEM, USFWS, or the United States to any current or future expenditure of resources in advance or in excess of the availability of appropriations from Congress. This agreement does not obligate BSEE, BOEM, USFWS, or the United States to spend funds on any particular project or purpose, even if the funds are available.
- e. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- f. Each Party will take appropriate measures to protect any proprietary, privileged or otherwise confidential information obtained from its activities under this MOU. These measures may include marking proprietary, privileged, or other confidential information with a restrictive legend. In the event any Party receives a Freedom of Information Act (5 U.S.C. § 552) request for records exchanged between the Parties pursuant to this MOU, the Party receiving the request will: (a) consult with the one or both other Parties before releasing any responsive records to the requester if the Party has a substantial interest in the responsive records; and (b) refer the responsive records request to the other Party for processing when the responsive records originated with the other Party.
- g. The Parties understand and agree that this MOU does not confer any legal rights, duties or obligations on any Party and is not subject to dispute in any forum. No Party is authorized by this MOU to act on behalf of another regarding any matter, and no Party will be bound by the acts or conduct of another in connection with any activity under this MOU.

VIII. Elevation.

The Parties will immediately elevate through the respective organizational levels any dispute between them regarding a particular practice or activity if the staff engaged in the dispute conclude that further discussion is not likely to resolve any differences.

IX. Effective Date, Modification, Review, Cancellation, and Expiration.

- a. This MOU will take effect on the date the document is signed by representatives of all three Parties.
- b. Modification: Any of the Parties to this agreement may propose modifications by submitting them in writing to the other Parties. No modification may be adopted except with the written consent of all Parties. All Parties will indicate their consent to or disagreement with any proposed modification within 60 calendar days of receipt of any proposed modifications. Upon the request of any Party, representatives of all Parties will meet for the purpose of considering modifications to this agreement.
- c. Review: The Parties agree to review this agreement every five years and to adopt any revisions they agree to be warranted. If no revisions are deemed necessary, then Appendix 2: Update History will be revised to reflect the date that the agreement was reviewed and that no changes were made. Revisions to the Appendix 2: Update History are considered non-substantive edits.
- d. Cancellation: Any Party may end its participation in this agreement by providing 60-days written notice to the other Parties. The cancellation of participation by one Party will not invalidate this agreement so long as the other two Parties remain active participants.
- e. Termination: This MOU may be terminated by agreement of all Parties.
- f. Expiration: This MOU will not automatically expire but will be reviewed and may be modified or cancelled in accordance with this Section IX.

IN WITNESS HEREOF, the Director of the Bureau of Ocean Energy Management, Director of the Bureau of Safety and Environmental Enforcement, and the Director of the U.S. Fish and Wildlife Service hereby execute this agreement:

**ELIZABETH
KLEIN** Digitally signed by
ELIZABETH KLEIN
Date: 2024.08.28
16:17:12 -04'00'

August 28, 2024

Director
Bureau of Ocean Energy Management

Date

Kevin Sligh

Digitally signed by Kevin Sligh
Date: 2024.09.05
08:35:14 -04'00'

September 5, 2024

Director
Bureau of Safety and Environmental Enforcement

Date



Digitally signed by MARTHA WILLIAMS
Date: 2024.09.10
15:52:43 -04'00'

September 10, 2024

Director
U.S. Fish and Wildlife Service

Date

Appendix 1: POINTS OF CONTACT

BOEM

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BSEE

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Appendix 2: UPDATE HISTORY

This agreement was initially finalized on _____.

This agreement was revised on _____.

This agreement was reviewed on _____, and no substantive edits were deemed necessary.