

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

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UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
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 Instruction Memorandum No. 2008-050
 Expires: 09/30/2009

To: All Field Officials
 From: Assistant Director, Renewable Resources and Planning
 Subject: Migratory Bird Treaty Act – Interim Management Guidance

Program Area: Fish, Wildlife and Plant Conservation

Purpose: The purpose of this Instruction Memorandum (IM) is to provide interim guidance to enhance coordination and communication toward meeting the Bureau of Land Management's (BLM) responsibilities under the Migratory Bird Treaty Act (MBTA) and the Executive Order (EO) 13186. This interim management guidance establishes a consistent approach for addressing migratory bird populations and habitats when adopting, revising, or amending land use plans and when making project level implementation decisions until a national Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS) is established.

Policy/Action: The following would provide interim migratory bird conservation policy for the BLM prior to completing and signing an MOU with the FWS as directed by the Migratory Bird Treaty Act (MBTA) and EO 13186. Both the interim policy and the MOU are to be considered primary agency efforts to minimize unintentional take as defined by the EO 13186 and optimized migratory bird efforts related to BLM activities.

Conservation Planning Guidance: For migratory bird conservation measures to be incorporated into new, revised, updated or amended land use plans, managers of BLM-administered lands that contain migratory birds and their habitats should consider the goals and objectives established in the following bird conservation strategies when writing, revising, updating, or amending land use plan documents:

- Bird Conservation Region (BCR) plans
- Partners In Flight (PIF) Bird Conservation Plans
- Partners in Flight North American Landbird Conservation Plan
- Waterfowl Management Plan
- Shorebird Conservation Plan
- [The North American Waterbird Conservation Plan](#)
- Audubon's Important Bird Areas
- State Wildlife Action Plans, (state habitat conservation plan)
- Recovery plans and conservation plans/strategies prepared for federally-listed candidate species

The habitat priority for enhancement is identified in the state habitat conservation plan. As funding and resources allow, habitat restoration and enhancement will be implemented with an emphasis on the improvement of plant communities and other habitat components for groups of birds of conservation concern whenever possible.

Land Use Planning NEPA Level Guidance: The following guidance is a recommended approach to ensure that migratory bird conservation is consistently addressed during land use plan revisions and amendments.

1) Wildlife Subsection: Include migratory bird species of concern in the affected environment when any of these species may be affected by the proposed actions of the preferred alternative or other alternatives. In addition to federally listed species, these would include Species of Conservation Concern and Game Birds Below Desired Condition (GBBDC see attached tables). Generally, these species are already addressed in State Wildlife Action Plans.

2) Management Common to All Alternatives:

Management Actions –Species of Conservation Concern

Management of **habitat** for Species of Conservation Concern will emphasize avoidance or minimizing negative impacts and restoring and enhancing habitat quality to implement EO 13186. Through the permitting process for all land use authorizations, promote the maintenance and improvement of habitat quantity and quality. To avoid, reduce or mitigate adverse impacts on the habitats of migratory bird species of conservation concern to the extent feasible, and in a manner consistent with regional or statewide bird conservation priorities.

3) Alternative Development: Based on the information describing the relative importance of the planning area to migratory birds, incorporate goals, objectives and other land use plan decisions into a range of alternatives.

These may incorporate:

- a. Habitat and population objectives from Bird Conservation Region Plans, State PIF plans, and State Wildlife Action Plans to maintain, restore, or enhance the habitat of migratory birds.
- b. Desired habitat conditions and/or population for major habitat types that support a wide variety of game, non-game, and migratory bird species, acknowledging the states' roles in managing fish and wildlife.
- c. Actions and area-wide use restrictions needed to achieve desired population and habitat conditions while maintaining a natural ecological balance and multiple-use relationships for area-specific bird conservation opportunities.
- d. In coordination with FWS and other BLM programs identify Best Management Practices where available for management actions or categories of actions to avoid or minimize unintentional take of migratory birds as well as measures aimed at conserving migratory bird habitats and populations.

4) Effects Analysis: Chapter 4:

- a. Address effects of actions authorized in Land Use Plans on migratory birds and their habitats with emphasis on species of concern (including FWS, BCR, PIF, State lists and BLM special status)
- b. Relate the condition of migratory bird habitats to Land Health Standards (see below).

5) Monitoring:

- a. Consider population (coordinated with partners) and habitat monitoring as tools for evaluating Land Use Plan effectiveness.
- b. When appropriate, use long-term migratory bird trends as an indicator of land health and habitat trend.
- c. Develop, where appropriate, wildlife habitat criteria including migratory bird habitat needs and incorporate them into Land Health Standards.

Project Level NEPA Guidance: Migratory birds should be included in every NEPA analysis of actions that have a potential to negatively or positively affect migratory bird species of concern. The following guidance is a recommended approach to ensure that conservation is consistently addressed during project planning.

- 1) Address, as appropriate, migratory bird species of conservation concern. This may include Species of Conservation Concern and GBBDC (see attached tables). As stated before, these species are addressed in State Wildlife Action Plans.
- 2) **Purpose and need:** When designing habitat and vegetation treatments, consider the future desired condition of habitat for migratory bird species of concern.
- 3) **Affected Environment:** Based on the habitat type described in the proposed action, use the migratory bird species of concern (more specifically Birds of Conservation Concern) list to determine which bird species occur in your Bird Conservation Region and project area.
- 4) **Effects Analysis:** Consider the following when addressing impacts to migratory birds.
 - a. If the proposed project or action does not have the potential to impact migratory bird species which have been identified as occurring within the project or action area, then document no adverse impact.
 - b. Discuss the potential impacts to individual birds (destruction of eggs, nests and nesting habitat, fragmentation of habitat, reduction in habitat patch size, human presence, noise, commotion, etc.).
 - c. Discuss the potential impacts, if any, to the population or species level for the individual species (e.g., will the proposed action impact an individual species' overall population within a given area, or region?).
 - d. Address direct and indirect effects including their resulting effects on migratory birds and their habitats.
 - e. Address the potential short-term and long-term effects of the project on migratory bird populations and their habitat. Use the best available demographic, population, or habitat association data in the assessment of impacts.
- 5) **Cumulative Impacts:** If applicable, the analysis of effects of an action should include a discussion about the effects on migratory bird species of conservation concern and their habitats at both the local (project area) and broad scale (regional). The NEPA analysis should address the amount of affected habitat, the relative abundance of these habitats over the landscape and the effects of other past and on-going projects. Address how the project would relate/affect the overall condition of land health in the area.
- 6) **Best Management Practices:** Best Management Practices to avoid or minimize the possibility of the unintentional take of migratory birds should be applied to all practices and projects. Practices should be applied to provide long-term benefits and improved vegetation community condition. If the proposed project or action does have the potential to impact migratory bird species populations which have been identified as occurring within the project or action area, evaluate options to mitigate the project to minimize or eliminate the identified impacts during periods of concentrated nesting activity. **Examples include:**
 - a. Minimize/avoid impacts to nesting migratory birds by imposing a Timing Limitation on use authorizations to mitigate vegetative disturbing activities during the primary portion of the nesting season. Most migratory birds nest between May 15 to July 15, but dates should be adjusted for the species and environmental conditions. Timing limitations may be modified based upon the species affected and the timing or intensity of breeding activity of the species of Birds of Conservation Concern involved.
 - b. Where disturbance cannot be avoided, the scale and the length of time of disturbance may be considered mitigating circumstances.
 - c. Inspect and clear an area for migratory bird nesting. These clearances could be performed by BLM or other qualified personnel. Factors to weigh in considering this option include vegetation type, vegetation density, timing and cost.
 - d. Explore opportunities to replace and prioritize habitat and habitat changes on or off site based upon the needs of Birds of Conservation Concern.
- 7) **Monitoring:** Strategies and plans for monitoring should target management questions at different geographic scales for project and plan level activities.

Timeframe: Effective immediately through the signing of an MOU by both the FWS and the BLM. The MOU would replace the interim policy guidance for addressing migratory bird conservation.

Budget Impact: Minimal staff time will be required to provide and address migratory bird data and impacts in planning and NEPA documentation, where applicable.

Background: The Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. § 703, implements various treaties and conventions between the United States and Canada, Japan, Mexico and the former Union of Soviet Republics for the protection of migratory birds. The MBTA prohibits hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting or exporting migratory birds, parts, nests and eggs, covered by the Act, except as permitted by regulations (50 CFR Subchapter B). The EO 13186 directs the executive branch departments and agencies to take certain actions to further implement the MBTA. Section 3 requires agencies to develop an MOU with the FWS to promote the conservation of migratory bird populations. One of the elements of such an MOU is a requirement that each agency ensure that environmental analysis of Federal actions required by NEPA or other established environmental review processes evaluates the effects of actions and agency plans on migratory birds, with emphasis on species of concern. "Species of Concern" are defined as "Those species listed in the periodic report, *Birds of Conservation Concern*, published by the Fish and Wildlife Service Division of Migratory Bird Management; priority migratory bird species documented in comprehensive bird conservation plans (North American Waterbird Conservation Plan, United States Shorebird Conservation Plan, Partners in Flight Bird Conservation Plan); species or populations of waterfowl that the North American Waterfowl Management Plan identifies as a high, or moderately high, continental priority; listed threatened and endangered bird species in 50 CFR 17.11; or MBTA-listed game birds below desired population sizes. (See the [Migratory Birds Website](#).)"

In accordance with the Migratory Bird Treaty Reform Act of 2004, the MBTA no longer applies to non-native species. On March 15, 2005, the FWS published a list of nonnative bird species to which the MBTA does not apply.

Manual/Handbook Sections Affected: None

Coordination: Coordination required between specialists and planners, and between specialists and external agencies such as State agencies and the FWS.

Additional Information: Additional helpful resources include: North American Bird Conservation Initiative (<http://www.nabci-us.org/>), FWS Division of Migratory Bird Management (<http://www.fws.gov/migratorybirds/>), Rocky Mountain Bird Observatory (www.rmbo.org), and Fire Effects websites.

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Signed by:
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Renewable Resources and Planning

Authenticated by:
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3 Attachments

- 1 - Executive Order 13186 (January 17, 2001) (4 pp)
- 2 - List of Birds Species of Conservation Concern (2 pp)
- 3 - List of Game Birds Below Desired Condition (GBBDC) (1 p)

Last updated: 10-21-2009

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