

**FISH AND WILDLIFE SERVICE
MIGRATORY BIRDS**

Migratory Birds

Part 720 Migratory Bird Management

Chapter 2 Service Responsibilities to Protect Migratory Birds

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2.1 What is the purpose of this chapter? This chapter, developed in accordance with Executive Order (E.O.) 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), provides information to all Service employees about the management and conservation of migratory birds.

2.2 What are the objectives of this policy? Because migratory birds are one of our primary trust resources, all Service employees should:

A. Implement their mission-related activities and responsibilities in a way that furthers the conservation of migratory birds and minimizes and avoids the potential adverse effects of migratory bird take, with the goal of eliminating take.

B. Emphasize an interdisciplinary, collaborative approach to migratory bird conservation in cooperation with other Service programs, State and Federal agencies, international entities, and non-governmental partners.

C. Use the best available scientific information to incorporate ecosystem integrity, reduction of invasive species, and long-term adaptive management into migratory bird conservation.

2.3 What is the scope of this chapter? E.O. 13186 directs all Federal agencies whose actions have a measurable impact on migratory bird populations to develop a Memorandum of Understanding (MOU) with the Service, in addition to calling on Federal agencies to take steps to promote migratory bird conservation. The scope of this chapter is what the Service can do internally to promote migratory bird conservation.

2.4 What are the authorities for this chapter?

A. Migratory Bird Treaty Act (MBTA) ([16 U.S.C. 703-712](#)).

B. Bald and Golden Eagle Protection Act ([16 U.S.C. 668](#)).

C. Convention on Wetlands of International Importance Especially as Waterfowl Habitat (I.L.M. 11:963-976).

D. Migratory Bird Treaties with Great Britain (for Canada) (39 Stat.1702; TS 628, as amended), Mexico (50 Stat. 1311; TS912, as amended), Soviet Union (Russia) (T.I.A.S. 9073), and Japan (25 UST 3329; T.I.A.S 7990, as amended).

E. Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Pub.L. 93-205).

F. Fish and Wildlife Coordination Act ([16 U.S.C. 661-667](#)).

G. Migratory Bird Conservation Act ([16 U.S.C. 715-715d, 715e, 715f-715r](#)).

H. E.O. 13186 (66 FR 3853), Responsibilities of Federal Agencies to Protect Migratory Birds.

I. National Environmental Policy Act of 1969 ([42 U.S.C. 4321-4347](#)).

J. Fish and Wildlife Conservation Act ([16 U.S.C. 2901-2911](#)).

K. Endangered Species Act of 1973 ([16 U.S.C. 1531-1544](#)).

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L. Magnuson-Stevens Fishery and Conservation Act, as amended (Pub. L. 94-265).

M. North American Wetlands Conservation Act, as amended (16 U.S.C. 4401).

N. Neotropical Migratory Bird Conservation Act, as amended (16 U.S.C. 6101-6109, 1583).

2.5 What does the term ‘Species of Concern’ mean? The term “species of concern” means:

A. Those species listed in the periodic report, *Birds of Conservation Concern*, published by our Service Division of Migratory Bird Management,

B. 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 Plans),

C. Species or populations of waterfowl that the North American Waterfowl Management Plan identifies as a high, or moderately high, continental priority,

D. Listed threatened and endangered bird species in 50 CFR 17.11; or

E. MBTA-listed game birds below desired population sizes. (See our [Migratory Birds Website](#).)

2.6 How does the Service implement its overall responsibilities for ensuring the requirements in E.O. 13186 are met? We implement this policy when we start new actions or renew contracts, permits, delegations, or other third party agreements as well as when we start new, or revise existing Service land management plans. The Division of Migratory Bird Management and the Regional and California/Nevada Operations Office (CNO) Migratory Bird program staff coordinate the following Service responsibilities, as appropriate (see sections 2.7 through 2.14 for specific program responsibilities):

A. Support the conservation intent of the migratory bird conventions by:

(1) Integrating migratory bird conservation measures into our activities, and

(2) Avoiding or minimizing adverse impacts on migratory bird resources.

B. Restore and enhance the habitat of migratory birds.

C. Prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds.

D. Within established authorities and in conjunction with the adoption, amendment, and revision of our management plans and guidance, ensure that our plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts. Examples include: Partners in Flight Bird Conservation Plans, the U.S. Shorebird Conservation Plan, the North American Waterfowl Management Plan, and the North American Waterbird Conservation Plan. The North American Bird Conservation Initiative fosters integrated bird conservation, which is based on sound science, effective management, and efficient use of resources among the initiatives and bird conservation organizations.

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E. Ensure that environmental analyses of Federal actions required by the National Environmental Policy Act or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern (see section 2.5).

F. Control, within the scope of our statutory authorities, the import, export, and establishment in the wild of live non-native animals and plants that may be harmful to migratory bird resources.

G. Promote interagency inventory, monitoring, management studies, research, and information exchange related to the conservation of migratory birds and their habitats. This may include:

(1) Using national inventory and monitoring programs with standardized protocols to assess the status and trends of bird populations and habitats,

(2) Implementing management studies and research using national protocols and programs, such as the Breeding Biology Research and Monitoring Database (BBIRD), and

(3) Sharing inventory, monitoring, research, and study data for breeding, migrating, and wintering populations and habitats, such as Monitoring Avian Productivity and Survivorship (MAPS).

H. Promote education and outreach opportunities related to migratory birds, such as International Migratory Bird Day, the Junior Duck Stamp Program, Urban Conservation Treaties, Hunter Education, and the Shorebird Sister Schools Program.

I. Develop and provide training on migratory bird conservation to appropriate Service and other Federal agency employees.

J. Provide technical assistance on migratory bird species and their habitats to other Federal agencies.

K. In conjunction with other Federal agencies, work to develop reasonable and effective conservation measures for key management actions that affect migratory birds and their natural habitats with emphasis on species of concern.

L. Work to identify special migratory bird habitats (migration corridors, stop-over habitats, ecological conditions important in nesting habitats, etc.) to aid in collaborative planning.

M. In consultation with the Department of State, as appropriate, promote migratory bird conservation in international activities and with other countries and international partners.

N. Participate in the Council for the Conservation of Migratory Birds.

O. Strengthen partnerships with non-governmental entities to further migratory bird conservation.

2.7 How does the Service's Migratory Bird program implement E.O. 13186?

A. The **Division of Migratory Bird Management** staff:

(1) Along with the Division of Bird Habitat Conservation and Regional and CNO Migratory Bird program staff, coordinates the development of guidance and provides technical assistance, as appropriate, to other Service programs that must implement the responsibilities sections 2.8 through 2.14 below describe.

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(2) Enters permitted migratory bird take activities into the Service Permit Issuance and Tracking System (SPITS), including species and number of individuals taken, in a timely manner.

(3) Coordinates training and information exchange both within the Service and with other Federal agencies on the methods and means of avoiding or minimizing take with the goal of striving to eliminate take of migratory birds and conserving and restoring migratory bird habitat.

(4) In coordination with other Federal and State agencies and non-governmental organizations:

(a) Improves the design of existing migratory bird surveys and increases efforts to monitor species whose status is poorly known, especially species of concern; and

(b) Develops status assessments for migratory bird species of concern that identify their limiting factors and promotes strategies for addressing them.

(5) Facilitates migratory bird conservation through the increased use of biologically-based, geospatial planning tools, such as Geographic Information Systems and statistical modeling, that identify focal areas for bird habitat protection, restoration, and management.

(6) Administers the migratory bird permit program consistent with the intent of this policy.

(7) Increases dialogue between Regional and CNO Migratory Bird program staff, refuge biologists, and refuge managers during the evaluation process for species of concern, development of standards (e.g., banding, monitoring) for biological work on migratory birds, and writing of strategic Regional/CNO plans.

(8) Raises public awareness about the possible presence of birds in a nest and the risk of violating the Migratory Bird Treaty Act (MBTA), the Endangered Species Act, and the Bald and Golden Eagle Protection Act. Informs the public of factors that will help minimize the likelihood that take would occur should nests (with birds or eggs) be destroyed (also see Migratory Bird Permit Memorandum on Nest Destruction, April 15, 2003).

(9) Coordinates with Joint Ventures and other partners to develop goals and objectives for migratory birds for all Bird Conservation Regions in the U.S. Provides expertise to the National Wildlife Refuge System (NWRS) staff to integrate these goals and objectives into Comprehensive Conservation Plans (CCP) and other land management plans and to plan the future of the NWRS.

B. The Division of Bird Habitat Conservation staff:

(1) Provides funds for partnerships that conserve habitats benefiting migratory birds through competitive matching grants (North American Wetlands Conservation Act and Neotropical Migratory Bird Conservation Act).

(2) Encourages Joint Ventures to address migratory bird conservation priorities, consistent with national and international bird plans, in their biological planning work, conservation design, project implementation, and monitoring evaluation and research activities.

(3) Produces and markets the Federal Migratory Bird Hunting and Conservation Stamp to increase NWRS acquisitions to conserve migratory birds and implements the Junior Duck Stamp Program to increase conservation awareness.

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2.8 How does the Service's Wildlife and Sport Fish Restoration program implement E.O. 13186?

Our Wildlife and Sport Fish Restoration program staff:

A. Encourages partners to incorporate best management practices into their migratory bird conservation projects.

B. Encourages State agencies responsible for implementing fish and wildlife conservation and restoration grants administered through our Federal Assistance program to design their projects to provide benefits to migratory birds, particularly species of concern, as appropriate. These programs include, but are not limited to:

- (1) Wildlife Restoration,
- (2) National Coastal Wetlands Conservation Grants,
- (3) Multistate Conservation Grants,
- (4) State Wildlife Grants, and
- (5) Landowner Incentive Programs.

2.9 How does the Service's National Wildlife Refuge System (NWRS) implement E.O. 13186? Our NWRS staff:

A. Coordinates and implements plans and actions (such as CCPs and habitat management plans), in support of applicable comprehensive migratory bird planning efforts, such as:

- (1) The Partners in Flight Bird Conservation Plans,
- (2) The U.S. Shorebird Conservation Plan,
- (3) The North American Waterfowl Management Plan, and
- (4) The North American Waterbird Conservation Plan.

B. Increases dialogue among refuge biologists, refuge planners, and the Regional/CNO Migratory Bird program staff during the CCP process and development of biological work plans for migratory birds and refuge strategic regional plans.

C. Integrates Bird Conservation Region (BCR) goals and objectives into the goals and objectives of CCPs and other management plans for individual NWRS units, as appropriate.

D. When developing CCPs and other management plans for NWRS units, identifies and evaluates opportunities to further provide habitats and ecological conditions within the BCR needed to achieve the migratory bird conservation goals and objectives for that Region/CNO.

E. Coordinates with the Division of Migratory Bird Management and Service Ecological Services (E.S.) field offices to evaluate proposals for siting towers or power lines on refuges. When issuing special use permits for the installation of such facilities on refuge lands, permit stipulations should encourage the permittee to implement best management practices, such as compliance with voluntary communication tower and power line guidelines and Service wind power guidelines.

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F. As part of integrated pest management on refuges, ensures that there is limited use of pesticides harmful to birds. Where refuges must use pesticides that are harmful to birds, monitors the site during and after application for potential bird kills. Where employees discover problems, modifies control strategies to prevent future impacts.

G. Assesses the impact of invasive species management on migratory birds, and makes recommendations on how to best achieve invasive species management and migratory bird conservation goals. Employees should give priority to species of concern and long-term habitat benefits. Coordinates with the Division of Migratory Bird Management and the Regional/CNO Integrated Pest Management Coordinator when developing integrated pest management plans and programs for NWRS units where implementation could significantly affect migratory birds.

H. Manages refuges to encourage the restoration of native habitat communities for species of concern, where appropriate.

I. Evaluates all management practices that may cause migratory bird mortality and incorporates management principles that strive to minimize or avoid take, with emphasis on species of concern. For example, conducts restoration and management practices such as flooding, mowing, timber harvest, and burning (e.g., their timing, location, and intensity) in ways that minimize or avoid loss of nests and young, while still meeting management objectives.

J. Evaluates current migratory bird management actions to determine their effectiveness towards achieving management goals.

K. Develops measures to provide escape routes or refugia when clearing vegetation (e.g., mowing from the inside out, mosaic patterns during prescribed burns).

L. When employees do not know with a reasonable degree of certainty what the impacts of their management actions are on migratory birds, works cooperatively with Regional/CNO Migratory Bird Program staff, other agencies, research institutions, or other entities to evaluate the effectiveness of the management practices to accomplish the desired objectives for migratory birds.

2.10 How does the Service's Endangered Species program implement E.O. 13186? Our Endangered Species staff:

A. Incorporates habitat objectives of the bird conservation plans (see 2.6D), as appropriate, into Endangered Species Act (ESA) Section 10 permits associated with Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

B. Enters permitted migratory bird take activities into SPITS, including species and number of individuals taken, in a timely manner.

C. When conducting consultations with other Federal agencies on actions that may affect proposed or candidate species, incorporates migratory bird conservation into recommendations as appropriate.

D. Offers technical assistance within the Service and to the public about recovery needs of listed, proposed, or candidate migratory bird species.

E. Considers opportunities for addressing migratory bird conservation when developing and implementing recovery plans, Candidate Conservation Agreements, and grants funded under the ESA.

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F. Implements land acquisitions for the purpose of conservation of listed species, including migratory birds.

G. Works with the Migratory Bird program to identify migratory bird species that may warrant listing under the ESA and to address monitoring and conservation of recently-delisted migratory bird species.

2.11 How does the Service's Fisheries and Habitat Conservation program implement E.O. 13186?

A. Division of Fish and Wildlife Management Assistance and Habitat Restoration. Our Division of Fish and Wildlife Management Assistance and Habitat Restoration staff:

(1) Conducts site visits to flag cavity trees or active nest sites before we clear vegetation on projects we implement or fund. Encourages other entities to do the same on projects with a Federal nexus.

(2) Avoids clearing vegetation during the nesting season, particularly for species of concern.

(3) Incorporates escape routes or refugia into plans involving habitat manipulations (e.g., mowing vegetation from the inside out, mosaic patterns during prescribed burns).

(4) Reports to Regional/CNO Migratory Bird program staff incidents of take, such as those that may occur when birds are lost or wounded by fish sampling gear. Monitoring take provides useful data for the development of non-lethal techniques.

(5) Requests that contractors, heavy equipment operators, and private land owners implementing Service-funded projects avoid disturbing active nest sites during project construction.

(6) Evaluates the timing of restoration or management activities to avoid or minimize impacts to migratory birds when feasible. Places priority on avoiding impacts to species of concern during the nesting season.

(7) Recommends the use of nondestructive, nondisruptive sampling whenever feasible on site assessments.

(8) Encourages partners to incorporate best management practices into their migratory bird habitat projects.

(9) Offers technical assistance within the Service and to the public about recovery needs of listed, proposed, or candidate migratory bird species.

(10) Considers opportunities for addressing migratory bird conservation when developing and implementing fishery management plans through fish commissions or councils, such as the Atlantic States Marine Fisheries Commission.

(11) Coordinates efforts with the Natural Resource Conservation Service to ensure Farm Bill provisions are "bird-friendly" and address migratory bird conservation, where appropriate.

(12) Develops outreach material identifying and promoting regional native food plants for migratory bird species of concern.

B. Division of Habitat and Resource Conservation. Our Division of Habitat and Resource Conservation staff:

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(1) Participates in early project planning to advance bird conservation, with emphasis on species of concern. Specifically, they:

(a) Identify bird-related goals, conservation measures, and comprehensive plans applicable to the project area,

(b) Advise on project impacts to migratory birds,

(c) Identify means and measures to avoid or minimize potential for take of migratory birds, eggs, and active nests, including, but not limited to:

(i) Project modification or denial;

(ii) Identification of time of year restrictions on clearing vegetation;

(iii) Recommendations about avoiding cavity trees, colonial bird nests, and other active nests; and

(iv) Recommendations about avoiding nests of species of concern.

(2) Ensures that environmental analyses required by the National Environmental Policy Act or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, particularly species of concern. This consideration is relevant to both Service actions and the review of other Federal agency actions. Use best available demographic, population, or habitat association data in the assessment of impacts on migratory birds.

(3) Coordinates with the respective Department of Defense Armed Forces in the development, review, and implementation of Integrated Resource Management Plans (INRMP) to ensure they address migratory bird conservation when applicable. Staff actively participates on INRMP teams to ensure they are addressing migratory bird conservation during INRMP development and for the 1-year and 5-year INRMP reviews.

(4) Coordinates Federal project assessments with the Regional/CNO Migratory Bird program when proposed activities may have a negative effect on migratory birds, particularly species of concern.

(5) Increases review and consultation efforts for activities that affect migratory bird populations and habitats, including communication towers, wind turbines, and other utility structures.

(6) Promotes compliance with communication tower, power line, and wind power guidelines as they are developed or revised.

(7) When completing project reviews, recommends to project applicants that they incorporate sufficient funding in their budgets for investigating and assessing issues pertinent to migratory birds, particularly species of concern.

C. Division of Environmental Quality. Our Division of Environmental Quality staff:

(1) When conducting environmental contaminants studies, limits adverse effects of collection on migratory birds by not taking live birds whenever possible and using non-lethal sampling whenever feasible (e.g., drawing blood or feather collection).

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(2) Improves the use and dissemination of the results of environmental contaminants investigations that relate to migratory bird management and status. Continues to use and improve the database for the Contaminant Assessment program on National Wildlife Refuges to provide information of concern to migratory bird managers.

(3) Uses surrogate, captive bred, or more abundant avian species for testing sensitivity to environmental contaminants, especially when working in partnership with researchers at the U.S. Geological Survey (USGS), the Environmental Protection Agency (EPA), and in academia.

(4) Minimizes the loss of migratory birds from contaminants. Where terminally ill birds are euthanized during spill response or following other exposures to oil, hazardous materials, pesticides, or elevated levels of natural elements, uses specimens to obtain appropriate ecotoxicological information to assist in management planning.

(5) Assesses, minimizes, and where possible, eliminates potential adverse impacts to migratory birds from contaminants found on sites being considered for restoration activities.

(6) Where feasible, uses existing plans for migratory bird management (see section 2.6D) when developing restoration options for compensation for injuries to migratory birds.

(7) Coordinates intra- and inter-Service programs to assure remediation and other management actions taken to eliminate or reduce environmental contaminants focus on eliminating or significantly minimizing the take of migratory birds. Where possible, management actions should assist in the recovery and conservation of migratory birds.

(8) Requests appropriate funding levels for investigations and assessment of impacts of hazardous wastes, oil, and other environmental contaminants on migratory birds during general planning and budget initiatives, and encourages partners, both inside and outside the Service, to do the same.

D. Division of National Fish Hatchery System. Our Division of National Fish Hatchery System staff:

(1) Coordinates closely with other Service programs to ensure that:

(a) The Memorandum on Environmentally Beneficial Practices on Federal Landscaped Grounds (Presidential Memorandum, Environmental Practices on Federal Grounds, April 26, 1994) is followed and implemented, and

(b) It implements procedures to track the amount of pesticides known to harm birds when applied, and to return unused portions for recycling or disposal.

(2) Whenever possible, prevents the use of pesticides known to harm birds at fish hatcheries. Where they must use pesticides harmful to birds, notifies Service Ecological Services field offices and local Service Law Enforcement offices 72 hours prior to the application. The notification must include detailed data on the location (acre(s), latitude and longitude, section/range/township) and contact information for the sites during and after application. Works with the Ecological Services field office and Law Enforcement to conduct more follow-up evaluations after applications of potentially dangerous pesticides, and where problems are discovered, modifies control strategies to prevent future impacts.

(3) Coordinates with Division of Migratory Bird Management staff to evaluate the potential siting of towers or power lines on hatcheries or rights-of-way and complies with communication tower, power line, and Service interim wind power guidelines.

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(4) Develops alternatives to eliminate mortality of migratory birds and reduce, if possible, the effects they have on fish at hatcheries.

(5) Manages hatchery grounds to encourage the restoration of native habitat communities for species of concern, where appropriate.

(6) Provides nest boxes for migratory birds at hatcheries, with emphasis on species of concern.

(7) Develops alternatives that eliminate the mortality of migratory birds and reduce the conflicts between migratory birds and the effects they have on fish at hatcheries.

(8) Manages public use of fish hatcheries (including both non-wildlife and wildlife-dependent recreational use) and related facilities to minimize impacts on migratory bird populations and their habitats.

(9) Evaluates all management practices at fish hatcheries that may cause migratory bird mortality and incorporates management principles that strive to minimize or avoid take, with emphasis on species of concern. For example, conducts restoration and management practices in ways that minimize or avoid loss of nests and young, while still meeting site management objectives.

2.12 How does the Service's Law Enforcement program implement E.O. 13186? Our Law Enforcement staff:

A. In coordination with the Migratory Bird program staff, works with industries proactively through education and outreach to minimize the take of migratory birds.

B. Investigates violations of the MBTA and other Federal laws that affect migratory bird populations (e.g., commercial exploitation, market hunting, and take caused by poisonings, oil spills, and other environmental contaminants).

C. Prevents, within the scope of our statutory authorities, the import of live non-native animals and plants that may be harmful to migratory bird resources.

D. Works with Federal, State, and tribal counterparts to enforce migratory game bird hunting regulations and preserve hunting opportunities for Americans.

E. Continues to develop and provide training on migratory bird identification and enforcement techniques to appropriate Federal, State, and tribal agencies.

2.13 How does the Service's International Affairs program implement E.O. 13186? Our International Affairs staff:

A. Through the migratory bird treaties (i.e., with Canada, Mexico, Japan, and Russia), works with government leaders and other colleagues in those countries to develop innovative new approaches to migratory bird conservation that help to achieve our conservation goals and those identified specifically within the U.S. and North American bird conservation plans. Develops conservation approaches in a way that integrates them into the priorities of our partner countries.

B. Enters permitted migratory bird take activities into SPITS, including species and number of individuals taken, in a timely manner.

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C. Division of International Conservation:

(1) Project officers for small-grants programs work with grantees to avoid or minimize any negative impacts to migratory birds that may occur when implementing a grant.

(2) For scientific research grants on migratory birds, project officers work with grantees to make sure they are fully trained in the research methods to prevent negative impacts to birds (e.g., mist netting or other banding techniques).

(3) The Western Hemisphere Program and the Russian Program (i.e., for migrants shared between the Russian Far East and Alaska) integrate into their programs, as appropriate, migratory bird conservation efforts that positively affect species of concern. The Western Hemisphere Program and the Russian Program are adding an additional criterion to their proposal review sheets.

(4) Staff seeks opportunities to work with the World Bank, Asian Development Bank, the State Department's Agency for International Development, and other international programs that affect U.S. migratory bird species traveling outside the United States. Its objective is to promote conservation of migratory birds and avoid take of those birds.

2.14 How does the Service's Business Management and Operations program implement E.O. 13186? Our Business Management and Operations staff coordinates closely with other Service programs to ensure that:

A. Employees closely adhere to the Memorandum on Environmentally Beneficial Practices on Federal Landscaped Grounds, and

B. We incorporate best management practices into facility design, maintenance and repair, hazardous materials management, and mitigation to reduce or eliminate take of migratory birds. This includes consulting with the Regional/CNO Migratory Bird program before beginning any engineering project that may adversely affect migratory birds.

Acting

DIRECTOR



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