

APPENDIX E

MIGRATORY BIRD MANAGEMENT

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Migratory Bird Management

The Migratory Bird Treaty Act of 1918 (MBTA) (16 USC 703-712) protects all migratory birds and prohibits the taking of migratory birds, their young, nests, and eggs, except as permitted by the USFWS. The USFWS recommends that to avoid impacting birds protected under the MBTA, NBC survey for nesting birds in proposed disturbance areas and if necessary, waiting until the nesting and fledging process is complete. Alternatively, the USFWS recommends that conducting activities outside of nesting areas or outside of the general migratory bird nesting season for San Diego, which extends approximately from February 15th through August 15th to help avoid direct impacts.

In addition, Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds) directs all Federal agencies taking actions that have a potential to negatively affect migratory bird populations to develop and implement an MOU with USFWS by January 2003 that shall promote the conservation of migratory bird populations.

Specific actions for the management of migratory bird at NBC are discussed in **Chapters 4, 5, 6, 7, 8, 9** and **10**, under fish and wildlife management, and specific projects are outlined in **Appendix C, Tables C-1** through **C-8**.

Each Integrated Natural Resources Management Plan (INRMP) must address the conservation of birds and their habitat to promote and support migratory birds in compliance with the Migratory Bird Treaty Act (MBTA), Executive Order (EO) 13186 and any subsequent rules, and agreements. Navy policy is that, during annual reviews of INRMPs, installations will discuss with the U.S. Fish and Wildlife Service (USFWS) conservation measures implemented and the effectiveness of these measures in avoiding, minimizing, or mitigating the take of migratory birds (U.S. Department of the Navy [Navy] 2006).

Migratory Bird Treaty Act

The MBTA of 1918 (16 USC 703-711) is legislation that covers species protected under four international treaties. These treaties are agreements between the U.S., Canada, Mexico, Japan, and Russia and protect most species of birds. The MBTA prohibits the taking or pursuing of migratory birds, their eggs, feathers, or nests. Game birds are listed and protected except where specific seasons, bag limits, and other factors govern their hunting. Under current Federal depredation orders, exceptions are also made for some nuisance pests (e.g. blackbirds), but specific requirements must be met in order to carry-out control under these depredation orders. Common, non-native species not covered under the MBTA include: Rock Pigeons, European Starlings, and House Sparrows. Violations of the MBTA can result in fines for misdemeanor convictions of up to \$15,000. Therefore, if a project has the potential to affect nesting birds or nesting substrate (including the trimming of nest trees) a qualified biologist from Naval Base Coronado Environmental Division should be contacted to determine if there will be any violations of the MBTA. U.S. Department of Defense (DoD) policy states that migratory bird programs shall be established in support of and consistent with the military mission.

Executive Order 13186 and The USFWS/DoD MOU

A Council for the Conservation of Migratory Birds was established to help agencies implement EO 13186. The EO requires NEPA evaluations to include effects on migratory birds and that advance notice or annual reports must be made to the USFWS concerning actions that result in the taking of migratory birds. The EO also requires agencies to control the establishment of exotic species that may endanger migratory birds and their habitat. Pursuant to its MOU, each agency shall, to the extent permitted by law

and subject to the availability of appropriations and within Administration budgetary limits, and in accord with agency missions:

1. Support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;
2. Restore and enhance the habitat of migratory birds, as practicable;
3. Prevent or abate the pollution or detrimental alteration of the environment, for the benefit of migratory birds, as practicable;
4. Incorporate migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and non-Federal partners in planning efforts;
5. Within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as DoD Partners in Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;
6. Ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on special status species;
7. Provide notice to USFWS in advance of conducting an action that is intended to take migratory birds, or annually report to USFWS on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;
8. Minimize the intentional take of special status species by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 CFR parts 10, 21, and 22;
9. Identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on special status species, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with USFWS. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;
10. Within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

11. Promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with USFWS, the USGS-Biological Resources Division, and other appropriate repositories of such data (e.g. the Cornell Laboratory of Ornithology);
12. Provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;
13. 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;
14. Recognize and promote economic and recreational values of birds, as appropriate; and
15. Develop partnerships with non-Federal entities to further bird conservation.

The Migratory Birds EO 13186 (“Responsibilities of Federal Agencies to Protect Migratory Birds”, signed 10 January 2001) directs executive departments to take actions (listed above) regarding the protection of migratory birds. Among these actions is the development and implementation of a MOU with the USFWS within two years of the EO on the protection and conservation of migratory birds. For DoD activities other than military readiness, migratory bird concerns are addressed through a MOU (July 2006) developed in accordance with EO 13186. The USFWS/DoD MOU (FR 30 August 2006) that evolved out of the requirements of the EO addresses the conservation of migratory birds on military lands in relation to all activities except readiness.

The MOU is an agreement between the DoD and the USFWS on how the two agencies will collaborate to promote the conservation of migratory bird populations. The MOU does not authorize any take.

In April 2007, guidance was issued by the Under Secretary of Defense for Acquisition, Technology and Logistics on implementing the MOU to Promote the Conservation of Migratory Birds between the USFWS and DoD in accordance with EO 13186 (17 January 2001). This guidance covers all activities on DoD property including natural resources management, routine maintenance and construction, industrial activities, and hazardous waste cleanups.

The guidance emphasizes interdisciplinary collaboration in the framework of the U.S. North American Bird Conservation Initiative (NABCI) Bird Conservation Regions, collaborative inventory and long-term monitoring.

DoD Migratory Bird Rule

The DoD has specific requirements under implementation of MBTA regulations. Following a U.S. District Court decision that granted an injunction on live fire military training on behalf of a private party, Congress enacted the 2003 National Defense Authorization Act (NDAA), which authorized an interim period during which the prohibitions on incidental take of migratory birds would not apply to military readiness activities. During this interim period, Congress also directed the Secretary of Interior to, not later than one year after enactment of the NDAA, promulgate a regulation to deal with the incidental take of migratory birds in conjunction with military readiness activities from the take prohibition of the MBTA. Under the 2003 National Defense Authorization Bill, the House Armed Services Committee authorized a set of initiatives intended to “restore a balance between protecting the environment and military readiness.” One of these initiatives, regarding the MBTA, stated:

“The Migratory Bird Treaty Act allows Federal agencies to obtain permits to remove migratory birds for economic or safety reasons, such as clearing geese from a golf course or runway. However, a Federal court ruled in March 2002 that Navy activities at a training range near Guam violated the MBTA because the court felt that the law does not allow for permits for the accidental taking of birds during military readiness activities. As a result, the court temporarily shut down military training at the facility. In order to ensure that DoD can operate all of its facilities without further interruptions of this nature, the conferees provided the DoD with authority under which the MBTA would not apply to the incidental taking of a migratory bird by DoD during an authorized military readiness activity. In addition, the conferees directed the Secretary of the Interior, with the concurrence of DoD, to exercise its authority within one year to initiate regulations that would exempt DoD from the MBTA for incidental takings of migratory birds during authorized military readiness activities.”

In an effort to provide guidance for conflicts arising between military readiness activities and the MBTA, the USFWS issued the final rule on, "Migratory Bird Permits: Take of Migratory Birds by the Armed Forces" (50 CFR Part 21 in FR 28 February 2007, pages 8931-8950), hereinafter referred to as the Migratory Bird Rule. The Migratory Bird Rule authorizes the military to incidentally "take" migratory birds during military readiness activities under the MBTA without a permit. However, if the military determines that the activity will have a "significant adverse effect" on a population of migratory birds, they must work with the USFWS to develop and implement conservation measures to minimize and/or mitigate the effects.

If conservation measures are developed with USFWS under the Migratory Bird Rule, they require monitoring and record-keeping for five years from the date the Navy commences their conservation action. During INRMP reviews, the Navy must report to the USFWS migratory bird conservation measures implemented and the effectiveness of the conservation measures in avoiding, minimizing, or mitigating take of migratory birds.

Key to implementing the MBTA and the MOU between the USFWS and DoD are the wording of the authorization for take that requires an understanding of the definition of the following terms:

1. *Population*, is a group of distinct, coexisting (conspecific) individuals of a single species, whose breeding site fidelity, migration routes, and wintering areas are temporally and spatially stable, sufficiently distinct geographically (at some time of the year), and adequately described so that the population can be effectively monitored to discern changes in its status.
2. *Significant adverse effect on a population* means an effect that could, within a reasonable period of time, diminish the capacity of a population of migratory bird species to sustain itself at a biologically viable level. A population is "biologically viable" when its ability to maintain its genetic diversity, to reproduce, and to function effectively in its native ecosystem, are not significantly harmed. This effect may be characterized by increased risk to the population from actions that cause direct mortality or a reduction in fecundity. Assessment of impacts should take into account yearly variations, and migratory movements of the impacted species. Due to the significant variability in potential military readiness activities and the species that may be impacted, estimates of significant measurable decline will be determined on a case-by-case basis.

Many questions remain about how to implement the Migratory Bird Rule and the MOU. For example, how to evaluate significance and whether an effect is a "significant adverse effect" is still being determined. Since the impact assessment must be conducted on populations of migratory birds, there may be a need to collect better population baseline data.

Migratory Bird Management at NBC

Many natural resources management activities detailed in this INRMP benefit migratory birds including habitat management, erosion control, habitat restoration and invasive weed management. In addition, USFWS Birds of Conservation Concern and California Department of Fish and Wildlife Species of Special Concern that use NBC natural resources are identified.

Annual monitoring and/or regularly scheduled surveys are performed on NBC.

Of the over 250 species recorded at NBC installations, 61 have some special status assigned by government agencies (ESA, CESA, California Fully Protected Species, USFWS Bird of Conservation Concern, and BGEPA); see **Appendix F** Species Lists.

The following management measures are implemented by this INRMP.

Objective: Maintain and enhance populations, and nesting and foraging habitats of migratory birds on NBC.

1. Assess the effects of all projects on migratory birds during NEPA process. Ensure compliance with MOU between USFWS/DoD on the Conservation of Migratory Birds and the “Migratory Bird Rule”
2. Identify any actions that require an MBTA permit and, if necessary, obtain appropriate permit for take of migratory birds.
3. Develop effective management for minimizing the unintentional take of migratory birds.
4. Conduct regular surveys (e.g., Western Burrowing Owl annual surveys and a general migratory bird survey for all species should be conducted every 5 years when the baseline inventories are scheduled to be repeated) to determine what species of migratory birds may have potential to be on NBC.
5. Implement monitoring protocols contained within the DoD Coordinated Bird Monitoring Plan. Contribute data to the Coordinated Bird Monitoring Database.
6. Continue monitoring listed species as described in this INRMP and adapt monitoring and management actions as needed.
7. Develop migratory bird specific BMPs and ensure these BMPs are included in project plans (e.g., plan all tree trimming during the non-nesting season and apply bird-friendly building design features whenever possible).
8. Develop and distribute outreach and education materials on migratory birds.
9. Revegetate with native species contained on the NBC recommended plant list.
10. Participate in DoD Partners in Flight initiative.
11. Ensure feral cats are eliminated from NBC per SECNAVINST 6401.1A.

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