

Navigating Regulatory Reform: Crafting Solutions for Progress



LISTING OF THE TRICOLORED BAT

Issue

In September 2022, the tricolored bat (*Perimyotis subflavus*; TCB) was proposed to be listed as Endangered under the Endangered Species Act (ESA)¹. Final ruling is expected to be issued in 2024.

Rationale

- Significant TCB population declines (up to 90% in portions of their range) primarily due to the spread of white-nose syndrome (WNS)².
- Other major contributing factors for decline – wind energy, habitat loss, and climate change¹.

Implications

- Substantial ramifications for the renewable energy (RE) industry given TCB's extensive range (39 states east of the Rockies).
- Risk of bat fatalities from collisions with turbine blades.
- Regulatory hurdles requiring developers to adopt innovative solutions to mitigate effects.
- TCB abundance projected to decrease 19–21% by 2030 under current wind dev. scenarios³.
- Solar energy development to face new construction-related take risks.

Solutions and Benefits

- Smart curtailment.
- Seasonal tree clearing.
- Presence-absence surveys.
- Deterrents and other new technology.
- Programmatic take coverage.
- Agency guidance regarding best management practices.

NATIONAL ENVIRONMENTAL POLICY ACT AMENDMENTS

Issue

On June 3, 2023, the Fiscal Responsibility Act (FRA) was signed into law with amendments to the National Environmental Policy Act (NEPA). In addition, Council on Environmental Quality (CEQ) expected to publish its Final "Phase 2" NEPA rule⁹.

Change

- One federal agency designated to coordinate with participating agencies and oversee preparation of a single environmental document.
- Prescribed time limits for Environmental Impact Statements (EIS) and Environmental Assessments (EA).
- Project sponsors allowed to prepare EISs with prescribed procedures developed by the lead federal agency.
- Use of an online permitting portal system to increase efficiency during the review process.
- Analysis of negative environmental impacts from the No-Action Alternative to be included in a NEPA document.

Implications

- Changes to what constitutes a "major federal action".
- Statutory time limits with possible court-ordered preparation schedules.
- Sponsor-prepared NEPA documents.

Solutions and Benefits

- Minimize delays with designation of lead federal agency through early coordination.
- Provides more certainty to private applicants as FRA changes are difficult to be undone by change in administration.
- An on-line portal would facilitate transparency and accelerate the NEPA review process.

EAGLE TAKE PERMIT REVISIONS

Issue

Final amendments to the Eagle Take Permit (ETP) regulations under the Bald and Golden Eagle Protection Act (BGEPA) was published in the Federal Register on February 12, 2024, to go into effect on April 12, 2024⁴.

Rationale

- RE projects pose risks to eagles – turbine blade collisions, habitat disruption and fragmentation, transmission line-related electrocution⁵.
- Continued decline in the Western US golden eagle (*Aquila chrysaetos*) populations due to unauthorized take.
- Only 26 USFWS-issued ETPs, but over 1,000 wind energy projects across the U.S.
- Current permit process is cumbersome, lengthy, and expensive.
- Revised permit aims to enhance permitting efficiency, streamline compliance processes, provide standardized BMPs, and maximize conservation benefits.

Implications

- Two permit types: general permits for low-risk projects and specific permits.
- Activity-specific eligibility criteria for general permits = faster and easier approval of take coverage and simplified permit requirements.
- > 80% of existing land-based wind turbines in the lower 48 states eligible for general permits.
- Implementation of compensatory mitigation under general permits.
- Removal of third-party monitoring requirements for both permit types.
- Specific permits remain available where a project does not qualify for a general permit.

Solutions and Benefits

- Early planning and engagement with U.S. Fish and Wildlife Service (USFWS).
- Eagle surveys to evaluate risk.
- Implement latest technology in moderate and high-risk areas.
- Less onerous permit requirements and conditions.
- Increase participation in eagle conservation/mitigation measures.

MIGRATORY BIRD TREATY ACT PERMIT PROGRAM

Issue

USFWS considering proposed rule to establish a framework for issuing permits for the incidental take of migratory birds under the Migratory Bird Treaty Act (MBTA)⁶.

Rationale

- Decline of North American bird populations by an estimated 3 billion birds in the last 50 years⁷.
- RE projects pose risks to migratory birds – wind turbines or solar arrays that may disrupt nesting and create collision and electrocution hazards⁸.

Implications

- RE projects required to assess potential risks to migratory birds and obtain a permit to legally operate.
- Challenges in identifying suitable project sites that minimize potential take of migratory birds.
- Required to implement conservation measures to minimize impacts, monitor and report fatalities, and mitigate unavoidable take.

Solutions and Benefits

- Remove potential liability faced by RE infrastructure projects that harm or kill migratory birds.
- Streamlined process that covers impacts on migratory birds.
- Remove regulatory uncertainty.
- Promote long-term sustainability and conservation of migratory bird populations.



Acknowledgements

Stanley Jones, migratory bird image, ICF

USFWS, tricolored bat image, <https://www.fws.gov/story/2022-09/tricolored-bat-frequently-asked-questions>

References

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