

# Incidental Take

Developing a Regulatory System for  
Authorizing Incidental Take of  
Migratory Birds Under MBTA

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U.S. Fish and Wildlife Service  
Migratory Bird Program  
*Conserving America's Birds*





# Incidental Take - Birds

- Birds live and move all across the North American continent
- They are susceptible to natural and human-caused injury and mortality.
- Millions of birds die each year from collisions, electrocutions, other human-caused sources.
- Human-caused sources of mortality are becoming more prevalent.





# Incidental Take - Notice of Intent

- The MBTA provides the framework to establish an authorization program to reduce existing human-caused mortality of birds.
- The Service intends to prepare a Programmatic Environmental Impact Statement.
- This PEIS will evaluate potential environmental impacts of a proposal to authorize incidental take.





# Incidental Take - Notice of Intent

## Notice of Intent To Prepare a Programmatic Environmental Impact Statement

Develop a system to authorize incidental take of migratory birds under the Migratory Bird Treaty Act (MBTA)

This will allow us to manage project risk to reduce migratory bird take that is already occurring.





# Objectives

- Promote the conservation of migratory birds by reducing incidental bird mortality and securing compensatory mitigation
- Provide legal certainty to agencies, industry, public regarding compliance with MBTA
- Minimize administrative burdens on applicants and the FWS



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# Proposal for Regulation

Possible approaches include:

- Establishing **general authorizations** for select industry sectors;
- Establishing a process for providing **individual incidental take permits**.
- Authorizing incidental take in **memoranda of understanding** with federal agencies; and
- Continue working with interested industry sectors to develop **voluntary guidance** that identifies best management practices or technologies that can effectively avoid or minimize avian mortality from hazards in those sectors.

*These approaches may be considered separately or in any combination.*



# Proposed Regulatory Framework

## *General authorization*

- Selected industry sectors
- Applicant compliance with conservation measures
- Limited initial scope
  - Oil, gas, and wastewater disposal pits
  - Methane or other gas burner pipes
  - Communication towers
  - Electric transmission and distribution lines
  - Consideration of other industry sectors, such as wind energy generation.



# Proposed Regulatory Framework

## *Memoranda of Understanding*

- Expand existing MOUs and/or negotiate MOUs with federal agencies to provide an efficient programmatic approach to regulate and authorize incidental take caused by federal agency programs and activities.
- Conservation benefits realized through commitments by other federal agencies to properly consider and mitigate for impacts on migratory birds in their planning and permitting processes.



# Proposed Regulatory Framework

## *Individual permits*

- Negotiate individual permits for complex projects to achieve conservation benefits for migratory birds, by requiring effective measures to avoid or minimize take and compensatory mitigation for unavoidable take.
- Minimize the administrative burdens for both applicants and the Service.





# NEPA Process

- Internal Input
- Federal agency, State Agency, and Tribal input
- Public Scoping Open Houses
  - 6/16/15, Sacramento, CA, 6-9 PM
  - 6/18/15, Denver, CO, 5-8 PM
  - 6/30/15, St. Louis, MO, 5-8 PM
  - 7/2/15, Arlington, VA, 2-5 PM
- National Webinar, 7/8/15 (register at <http://birdregs.org/process/meetings/>)





# Approaches for Authorization

*Requesting comments on:*

- The approaches for authorizing incidental take
- Actions being considered to implement these approaches
- Other actions the USFWS should consider with respect to the regulation and authorization of incidental take
- How to integrate existing guidance and plans, such as Avian Protection Plans, into the proposed regulatory framework
- Whether actions should distinguish between existing and new industry facilities and activities
- If new industry facilities and activities are addressed by the USFWS, whether additional NEPA review should be conducted in order to provide incidental take authorization for such facilities and activities



# Benefits and Interactions

*Requesting comments on*

Ways that migratory birds and other environmental issues may be affected by the proposed actions under consideration;

- Ways to describe and evaluate the interactions between affected resources;
- Bird species that have religious or cultural significance for tribes or the general public, and impacts to these or other cultural values that could be caused by the actions being considered in the PEIS.



# Benefits and Interactions

*Requesting comments on*

Ways that migratory birds and other environmental issues may be affected by the proposed considered actions;

- Support holistic traditional life and heritage activities;
- Are associated with linguistic landmarks, sacred geography, or place-based ceremonies;
- Are attributes of wilderness, solitude, quiet or natural sounds, and dark for meditation or ceremony;
- Are important to traditional education associated with place-based stories, names, history, practices, skills, and language;
- Are important to local economies, including recreational activities associated with migratory birds.



# Compensatory Mitigation

## *Conservation Benefits*

- Compensatory mitigation can provide conservation benefits through funding of activities such as habitat replacement and/ or restoration.
- All permitted actions would require compliance with permit terms established to avoid or minimize take.
- The authorization program may also create a mechanism to obtain meaningful compensatory mitigation for bird mortality that cannot be avoided or minimized.
- Mitigation for incidental take could provide conservation benefits through funding of habitat replacement, restoration, or, in certain circumstances, acquisition.



# Compensatory Mitigation

*Requesting comments on:*

- What do you think about compensatory mitigation and/or other mitigation techniques?
- Should the USFWS require compensatory mitigation for all authorized take? (There could be some scaled level of compensatory mitigation for every authorization.)
- Should compensatory mitigation only be required for certain types or levels of take?



# Thank you

Questions? Please contact : [Thomas\\_Dietsch@fws.gov](mailto:Thomas_Dietsch@fws.gov)



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