



USFWS DECISION MEMORANDUM



DATE: August 15, 2025

TO: Brian R. Nesvik, Director, U.S. Fish and Wildlife Service

FROM: Gina Shultz, Acting Assistant Director – Ecological Services Program

SUBJECT: BP037546: U.S. Fish and Wildlife Service (FWS)’s Response to Secretary’s Order 3417 (Addressing the National Energy Emergency).

I. DESCRIPTION OF ACTION

This package transmits for Acting Director’s approval the FWS’s response to Secretarial Order 3417 (Addressing the National Energy Emergency). The attached Memorandum serves as the FWS’s energy action plan and fulfills requirements of section 4(b) of the Assistant Secretary for Fish and Wildlife and Parks (AS-FWP) Action Plan for Secretarial Order (SO) 3417 (Addressing the National Energy Emergency).

II. BACKGROUND

Executive Order (EO) 14156, titled “Declaring a National Energy Emergency,” directs executive departments and agencies to identify and use all relevant lawful emergency and other authorities available to them to facilitate and expedite the harnessing of American energy resources.

In turn, SO 3417 requires all DOI Bureaus and Offices to identify all relevant emergency and other legal authorities available to expedite the completion of all authorized and appropriate infrastructure, energy, environmental, and natural resources projects within their jurisdiction to perform or to advance, including use of all authorities to facilitate the supplying, refining, transporting, and exporting of energy. The AS-FWP Action Plan for SO 3417 calls for the FWS to submit a plan that identifies existing and needed tools that streamline ESA compliance of energy and critical minerals development and that identifies barriers to meeting the goals of the SO.

To respond to these directives the FWS developed the attached Memorandum as the FWS’s energy action plan that identifies existing and needed tools that streamline ESA compliance of energy and critical minerals development and that identifies barriers to meeting the goals of the SO. The FWS’s energy action plan to address the National Energy Emergency via expedited ESA energy reviews is to maximize use of the list of existing streamlining tools and expand or replicate the most successful tools.

The FWS’s energy action plan Information Memorandum was surnamed through Acting Assistant Secretary for Fish and Wildlife and Parks Lilly and is now ready for final approval.

III. POSITIONS OF AFFECTED STAKEHOLDERS

FWS's energy action plan was informed by input from FWS regions. The FWS has been actively coordinating with relevant partners (e.g., BLM, U.S. Army Corps of Engineers) to streamline ESA compliance of energy and critical minerals development and does not anticipate any controversy.

IV. TIMELINE/DEADLINE (IF ANY)

V. OTHER RELEVANT CONSIDERATIONS

VI. OPTIONS

1. Option 1: Approve the energy action plan as written.
2. Option 2: Approve the energy action pending additional edits.
3. Option 3:

VII. DECISION

1. Option 1

APPROVED: **BRIAN NESVIK**  Digitally signed by BRIAN NESVIK
Date: 2025.08.21 09:58:39 -04'00' DATE: _____

2. Option 2

APPROVED: _____ DATE: _____

3. Option 3

DENIED: _____ DATE: _____



USFWS INFORMATION MEMORANDUM



DATE: August 15, 2025

TO: Kevin Lilly, Acting Assistant Secretary for Fish and Wildlife and Parks

FROM: Brian R. Nesvik, Director, U.S. Fish and Wildlife Service

SUBJECT: *BP037546: U.S. Fish and Wildlife Service (FWS) 's Response to Secretarial Order 3417 (Addressing the National Energy Emergency).*

I. KEY FACTS

This Memorandum fulfills requirements of section (4) of the Assistant Secretary for Fish and Wildlife and Parks (AS-FWP) Action Plan for Secretarial Order (SO) 3417 (*Addressing the National Energy Emergency*).

II. BACKGROUND AND FWS POSITION

- Executive Order (EO) 14156, titled “Declaring a National Energy Emergency,” directs executive departments and agencies to identify and use all relevant lawful emergency and other authorities available to them to facilitate and expedite the harnessing of American energy resources.
- In turn, SO 3417 requires all U.S. Department of the Interior (DOI) Bureaus and Offices to identify all relevant emergency and other legal authorities available to expedite the completion of all authorized and appropriate infrastructure, energy, environmental, and natural resources projects within their jurisdiction to perform or to advance, including use of all authorities to facilitate the supplying, refining, transporting, and exporting of energy. The AS-FWP Action Plan for SO 3417 calls for FWS to submit a plan that identifies existing and needed tools that streamline the Endangered Species Act (ESA) compliance with energy and critical minerals development and that identifies barriers to meeting the goals of the SO.
- In March and April 2025, FWS surveyed and analyzed information regarding tools that streamline ESA compliance of energy development, opportunities for new tools, and barriers to meeting the SO’s goals.
- Existing tools that streamline energy development include: programmatic consultations and similar tools, plans, and agreements under ESA sections 7 and 10; software applications such as the FWS’s [Information for Planning and Consultation](#) (IPaC); determination keys (DKeys); interagency agreements; communities of practice, and administrative innovations.
- Opportunities for new streamlining tools include expanding or creating new programmatic approaches to environmental review, instituting internal and external

streamlining guidance, generating more DKeys, applying technological solutions, and simplifying and standardizing administrative processes.

- Potential barriers to facilitating and expediting ESA review of energy development include interagency communication and coordination.
- FWS's proposed plan to address the National Energy Emergency via expedited ESA energy reviews is to maximize use of the list of existing streamlining tools and expand or replicate the most successful tools.

III. POSITION OF AFFECTED STAKEHOLDERS/PUBLIC LANDS AFFECTED

Existing Tools

FWS offices currently use several types of tools to facilitate and expedite review of energy projects under the ESA, such as programmatic ESA consultations, plans, and agreements; technological applications and algorithmic tools; interagency agreements; practitioner groups; and administrative tools.

Programmatic Approaches Programmatic approaches under the ESA can address multiple similar, frequently occurring, or routine actions expected to be implemented in specific geographic areas, as well as proposed programs, policies, or regulations that provide a framework for future proposed actions. FWS has extensive experience in reviewing energy projects across broad scenarios and varied geography, which in turn has allowed the agency to identify commonalities in reviews. Programmatic approaches broaden the scope of review and permitting from the project level to a state, regional, or even national level, resulting in more efficient and effective ESA permitting processes and conservation of species and habitats. These programmatic solutions are key to faster project delivery and to reducing workload for field level staff and allowing for review of a greater number of projects within a set time period.

Framework, programmatic, and batched consultations under ESA section 7

Under ESA section 7, **programmatic consultations** are consultations addressing multiple actions associated with a program, geographic area, or other common factors, and are often developed to reduce future workload and review times. They offer opportunities for creative solutions and streamlining. FWS has at least 16 existing programmatic consultations that are applicable to energy development. FWS also implements **batched consultations**, which examine multiple similar proposed agency actions in a single consultation document to increase efficiency. For example, FWS Region 6 has successfully conducted batched consultation with the Bureau of Land Management (BLM) on oil and gas projects in multiple western Field offices. Additionally, FWS prepares **standing analyses** to evaluate frequently activities with no or insignificant or discountable effects to listed species and designated critical habitats; FWS conducts these analyses prior to and in anticipation of agency actions and uses these analyses to provide the biological and legal basis for Determination Keys (discussed below).

Programmatic, multi-species, and general conservation plans under ESA section 10

Like programmatic tools under ESA section 7, FWS has developed several types of programmatic tools for compliance with ESA section 10. These include **programmatic, multi-species, and general conservation plans**. Programmatic conservation plans involve a central permit holder and take advantage of efficiencies of scale. General conservation plans (GCP) are also broad but do not require a central permit holder and are developed by the FWS, as opposed to project proponents. Both plan types allow FWS to prepare just one National Environmental Policy Act (NEPA) document and biological opinion for all the participating projects. As an example of the latter, the Oil and Gas GCP for Santa Barbara County covers three listed species and streamlines ESA section 10 permitting for a wide variety of non-federal oil and gas activities, including exploration, development, extraction, storage, and remediation.

Conservation benefit agreements under ESA section 10

Conservation benefit agreements (CBA) are voluntary agreements involving private or other non-federal property owners where the actions in the agreement contribute to the conservation or recovery of the agreement's covered species. Covered species can include species listed as endangered or threatened under the ESA and/or non-ESA-listed at-risk species. In exchange for actions that contribute to the conservation of species covered by an agreement on non-federal lands, participating property owners receive formal assurances from FWS that if they fulfill the conditions of the CBA; FWS will not require any additional or different management activities by the participants without their consent. CBAs are the regulatory successor to Candidate Conservation Agreements with Assurances (CCAA) and Safe Harbor Agreements. As a demonstration of the potential scope and impact of these agreements, over 33 energy companies have joined the monarch butterfly CCAA, with over 284,000 acres of energy rights-of-way now supporting the species.

IPaC and determination keys

FWS's **Information for Planning and Consultation (IPaC)** system is a public-facing, custom application that provides project planning tools and helps users meet their ESA requirements. IPaC uses automation to increase ESA section 7 consultation efficiency. For example, IPaC generates official species lists, which are required to comply with ESA section 7. These official species lists are supported by backend databases of species occurrence, range, and critical habitat spatial layers. Where such documents have been developed, official species lists also include relevant standard avoidance and minimization measures, survey protocols, etc.

IPaC also increases ESA section 7 consultation efficiency through novel tools such as **Determination Keys (DKeys)**. DKeys are logically structured sets of questions designed to deliver programmatic consultations more efficiently. DKeys help IPaC determine if a project qualifies with an existing programmatic ESA section 7 consultation or standing analysis and deliver concurrence letters for qualifying projects. IPaC DKeys provide consistent and transparent outcomes and significantly reduce the time to complete consultation for qualifying

projects. In the last 5 years, IPaC users generated over 115,000 documents using DKeys, and over half of these required no further action on the part of FWS, Federal agency, or IPaC user. DKeys typically result in a final document in less than 30 minutes and all administrative logging for FWS project tracking is completed automatically, resulting in time and cost savings for the FWS, Federal Agencies, and project proponents. Certain Field Offices such as those in West Virginia and Michigan have employed DKeys to great success. For example, the All-Species Michigan DKey has generated 6,000 letters for projects since 2020 (a portion of which are for energy projects).

Interagency agreements

FWS has established **interagency agreements** with BLM on oil and gas and renewable energy (including transmission and geothermal) and with the Department of Energy (DOE) on transmission and grid resilience. These agreements advance efficiency in ESA review by improving interagency coordination, organizing annual workload planning, identifying priority energy projects, and facilitating the development of further streamlining mechanisms. The agreements also serve as vehicles to transfer funds to FWS for staffing capacity devoted exclusively to reviewing priority energy projects. The BLM-FWS Oil and Gas Program Office agreement has successfully functioned for years and in addition to supporting individual project review, has produced further streamlining tools such as conservation measures, survey standards, and assessments of reclamation practices to ease the BLM's compliance efforts.

Communities of Practice

FWS organizes internal **communities of practice** (CoPs) around essential work areas such as ESA section 7 consultation and energy. The FWS National Energy CoP has over 300 members and facilitates and expedites the review of energy development by providing communication networks and technological platforms for information sharing, collaboration, problem solving, and innovation. FWS recently launched an Oil and Gas subgroup to the National Energy CoP with over 100 members spanning several programs and all regions.

Other administrative innovations

FWS has successfully implemented a variety of **administrative tools** (such as template letters, standard conservation measures, user guides) that promote consistency and efficiency and provide action agencies and energy developers with faster ESA compliance. While these tools may be simple, they produce immense benefit for energy development by reducing the individual attention necessary to complete each review, enforcing standardization on communications, and better preparing project proponents for a successful review. For example, the Pennsylvania Field Office's optional fillable form for coal Protection and Enhancement Plans streamlines its approval process by condensing necessary information into three pages and providing proponents with a simplified application experience.

Opportunities for New Tools

Expanded and new programmatic reviews under ESA sections 7 and 10

Many of the existing programmatic reviews could be expanded to include additional geographical areas, species, or activities. For example, given the commonalities in design and potential impacts of linear infrastructure such as buried transmission lines and buried pipelines, programmatic reviews for electric transmission could be expanded to cover pipelines, or vice versa.

FWS can also work with other Federal agencies to develop new programmatic consultations and standing analyses for activities and species not yet covered under an existing streamlining mechanism. We would do so with the intent of implementing these through IPaC using DKeys (see below).

Standardized survey protocols and conservation measures

The purpose of these tools would not be to layer additional process steps onto Federal action agencies or energy producers but rather to replace specialized or customized processes, where appropriate, with standardized processes across offices, projects, etc. Activities that could be standardized include survey protocols and conservation measures, among others. Standardized survey protocols could reduce time and costs for project proponents and action agencies by providing predictability and clarity on the information needed to conduct reviews under the ESA. Similarly, standard conservation measures could be broadly applied across various classes of activities and made available via IPaC to promote consistency and predictability for faster project delivery and better conservation outcomes.

Expanded or new DKeys

DKeys have a proven track record of reducing the time necessary to arrive at a final determination. The application of existing DKeys can be expanded to new areas. Additionally, existing programmatic reviews can be adapted to the DKey model. FWS is currently undertaking an effort to develop standing analyses and DKeys for low impact projects for all states in the Continental US, as well as Puerto Rico, the Virgin Islands, Northern Mariana Islands, and Guam. Since the declaration of the National Energy Emergency, we have incorporated consideration of energy projects in this effort. Where impacts are greater than those covered through the national low impact DKey effort, FWS will also explore organizing strike teams to develop programmatic analyses and associated DKeys for the energy types identified in the National Energy Emergency EO in the most relevant geographic areas and with the most relevant listed species.

Additional interagency agreements

Interagency agreements are effective tools for aligning the work of Federal agencies and could be more broadly applied to address the national energy emergency. FWS' existing agreements with BLM and DOE can easily be directed towards the policy objectives of the EO and SO without modification and additional funding through these agreements could further grow FWS's

energy review staffing capacity. This agreement model could be expanded to other Federal and non-Federal partners involved in energy development.

State agency partnerships and joint planning initiatives

FWS participates in productive partnerships at local and regional levels with state fish and wildlife agencies (SFWAs) that leverage their unique on-the-ground knowledge of natural resources to identify sensitive habitats and find conservation opportunities. These SFWA-FWS partnerships can inform and expedite energy development by reducing resource conflicts, making for simpler ESA reviews. For example, the Southeast Conservation Adaption Strategy (SECAS), a partnership of Southeast SFWAs and Federal agencies, has developed a “data-driven spatial plan” for supporting “thriving fish and wildlife populations.” SECAS’s data resources have supported offshoot initiatives such as the Georgia Low Impact Solar Siting Tool, which streamlines solar energy development by identifying areas with less resource conflict in Georgia.

Barriers to Meeting the Goals of the SO

Staffing

FWS’s ability to conduct efficient and accurate ESA permitting for energy projects fundamentally relies upon staffing capacity. Knowledgeable and experienced biologists and software developers (for IPaC and its parent system, ECOSphere) are essential to work with action agencies and project proponents, provide technical assistance, and make legally defensible ESA regulatory determinations. The IPaC and ECOSphere development team were integrated into the Department and several IPaC and ECOSphere team members have left the agency as a result of this consolidation. It is important for the FWS to maintain support for base staffing capacity through resource management funding, while simultaneously pursuing other permitting and consultation innovations, and ensure the consolidated staff are able to continue to work hand-in-hand with the agency staff. Additionally, training may be necessary for those staff who may be reassigned to ESA and energy work.

Funding

Creating new tools and expanding applicability of existing tools to streamline ESA compliance with energy projects requires funding. FWS developed interagency agreements under the Inflation Reduction Act and Infrastructure Investment and Jobs Act that directly support our ability to meet the goals of the Energy EO and SO, but portions of these funds remain frozen pending review. This includes agreements with the Permitting Council to support the development of DKeys and improvements to IPaC and ECOSphere, and an agreement with DOE intended to provide funding for FWS personnel to coordinate and conduct timely environmental reviews for DOE-funded and authorized energy and transmission programs and projects. Releasing this funding for use by FWS could provide further opportunities for the FWS to support efficient processing of ESA compliance reviews for energy projects.

Interagency Communication and Coordination

To be most effective, we need improved coordination with partnering agencies to ensure our efforts are aligned. Most immediately, FWS needs access to the partner agencies' action plans, project lists, and other reports generated to comply with the EO and SO. In addition, FWS needs to better communicate our capabilities and our ESA energy streamlining tools and to share FWS's direction under its various action plans. In the long term, FWS needs to expand existing interagency agreements to facilitate workload planning, continued project prioritization, and development of new streamlining tools.

IV. DISCUSSION

Per the Action Plan, Ecological Services (ES) will brief the Director, AS-FWP, and then the Deputy Secretary.

Once approved, ES will implement the proposed plan to:

- Disseminate the list of existing streamlining tools to Field and Regional Offices to facilitate broader awareness and adoption
- Coordinate with relevant partners (e.g., BLM, U.S. Army Corps of Engineers) to determine which existing ESA energy tools to prioritize for expansion or replication
- Promote awareness and adoption of existing ESA energy tools, particularly with regard to ESA emergency consultations, through existing internal CoPs and agency partnerships
- Request the action plans, project prioritization lists, and other relevant materials of partner agencies so they we can modify our efforts to maximize alignment
- Expand existing interagency agreements and negotiate new agreements to create a sustainable long-term approach to innovating ESA energy tools and achieving broader synergy on addressing the national energy emergency

FWS will continue to assist action agencies requesting emergency consultation pursuant to EO 14156 by:

- Ensuring that FWS staff are available to consult promptly
- Ensuring that ESA considerations do not prevent or delay an emergency response by an action agency
- Collaborating with the action agency to explore other available expedited consultation processes (e.g., programmatic biological opinions, DKeys, etc.), if time allows
- Proactively developing and sharing conservation measures for species and habitats,
- Coordinating nationally with action agencies (e.g., BLM, USFS, U.S. Army Corps of Engineers) to promote clarity and consistency when conducting energy emergency consultations
- Developing functionalities to allow action agencies to request emergency consultation under EO 14156 through IPaC

Prepared by: *Gina Shultz, Acting Assistant Director – Ecological Services*