

FWS Takes Next Step Toward a Revised Migratory Bird Incidental Take Permits Regime

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On May 26, 2015, the U.S. Fish and Wildlife Service (FWS) published a notice in the Federal Register indicating its intent to prepare a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act to evaluate the potential environmental impacts of its proposal to create an incidental take permitting program under the Migratory Bird Treaty Act (MBTA). The PEIS will assess the environmental impacts of several potential permitting approaches, including general permits for specified hazards and industries, individual permits for specific projects or activities, memoranda of understanding with Federal agencies that authorize the incidental takings from their operations, and voluntary guidance for industry sectors regarding operational techniques or technologies to avoid or minimize incidental takings.

The proposed incidental take permitting program would expand the availability of incidental take permits under the MBTA to a wider range of industries and activities. Specifically, FWS will consider establishing general incidental take permits for the following industries and activities:

1. Oil, gas, and wastewater disposal pits;
2. Methane or other gas burner pipes at oil production sites;
3. Communication towers; and
4. Electric transmission and distribution lines.

FWS is requesting public comment on whether it should develop a general incidental take permit for the wind energy industry.

Public comment on FWS's notice are due by July 27, 2015. FWS did not provide a timeframe for completing the PEIS or the underlying rulemaking.

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