
Compensatory Mitigation for Land-based Wind Energy

Webinar 1: Regulatory Landscape

SEPTEMBER 13, 2023

SPONSORED BY



AUDIENCE QUESTIONS AND ANSWERS

Question: Can you briefly cover the current proposed revisions for the Eagle Act?

Answer: A good amount of information can be found at <https://www.fws.gov/regulations/eagle> (Matt Stuber).

Question: With the upcoming listing of the tricolored bat and anticipated listing of little brown bat in 2024, is there a plan to increase the in lieu fee area for bats to accommodate the range of additional species?

Answer: More information on the bat in lieu fees can be found at <https://www.fws.gov/program/endangered-species/bat-consultation-conservation-strategy> and <https://www.conservationfund.org/projects/range-wide-indiana-bat-and-northern-long-eared-bat-in-lieu-fee-program>. It currently covers Indiana bat and Northern long ear bat. Theoretically, it could be amended to include other species. The contacts on these web pages may be able to answer your question about if there are plans to do so (Shauna Everett).

Question: Can you compensate for take of both species and habitat?

Answer: Habitat as compensatory mitigation for eagles has been challenging to implement because of the difficulty in determining a number of eagles saved from such mitigation. The Service is open to all ideas for methods to quantify eagles saved from habitat preservation or manipulation, but have not been seen a viable proposal to date (Matt Stuber).

Question: What is currently being considered by US Fish and Wildlife Service related to using lead abatement for eagle mitigation?

Answer: The best model we are aware of that quantifies the eagles saved from lead abatement considers two methods specifically: a) reduction of lead ammo being used and left on the landscape, or b) physical gut pile removal. So either method could be viable and approved by the Service. A detailed proposal for lead abatement is currently under review by the Service (Matt Stuber).

Question: What is the US Fish and Wildlife Service's anticipated schedule for publishing the new Migratory Bird Rule?

Answer: That rule is currently with the Office of Information and Regulatory Affairs (OIRA) and we cannot predict when that will wrap up, but we are hoping soon (Matt Stuber).

Question: Does the US Fish and Wildlife Service prefer or prioritize any of the different types of mitigation over the others (e.g., doing it themselves, third party)?

Answer: The Service has a stated preference for any mitigation in advance of impacts over mitigation that is not in advance, but not a preference over a specific mechanism (Shauna Everett).

Answer: For eagles, the Service does have a preference for in-lieu fee programs if they are available in the appropriate eagle management unit. We encourage folks to take advantage of the upfront work the Service has done to approve these programs, as it's easier for everyone to utilize that pre-approval. But of course we're open to other programs too (Matt Stuber).

Question: What proportion of mitigation practices would you say actually result in more of the target species than they take?

Answer: In terms of condors our hope is certainly that with the minimization measures required with these incidental take permits there is less take (or no take?) than what is permitted. In this case, we would see a net benefit to the species from the compensatory mitigation. Additionally, with some of the compensatory mitigation (like constructing additional breeding enclosures), we could see benefits long after the mitigation has been completed. The wind companies are also conservatively mitigating at the upper end of the condor replacement ratio (Peter Sanzebacher).

Question: On July 27, 2023, US Fish and Wildlife Service issued a memo regarding funding research as an acceptable mitigation option for wind power habitat conservation plans (HCPs) that cover bat species affected by white-nose syndrome. Where is the Service in making this method viable for compensatory mitigation? Does the Service have any ideas on how to quantify research as mitigation?

Answer: As a general policy, the Service states that "In rare circumstances, a proponent can include as part of a mitigation package research or education that they can link directly to the relative threats to the species or show a quantifiable benefit to the species." Research as mitigation has to be thought about carefully—it is very species and program specific, and we are still working out those details in the case of wind and bats (Shauna Everett).

Question: How do eagle management systems and compensatory mitigation regulations translate to offshore wind?

Answer: The relative risk to eagles from offshore wind is unknown at this time. Any take of eagles at offshore wind facilities would be a violation of the Bald and Golden Eagle Protection Act. Should the Service entertain the issuance of any permits to authorize the incidental take of eagles at offshore wind facilities, we would be required to determine if permit issuance would be compatible with the Service's preservation standard. Compensatory mitigation would be required if necessary to meet this standard (Matt Stuber).

Question: What are the potential differences in mitigation requirements for eagles under the Bald and Golden Eagle Protection Act (BGEPA) and California's recent changes to take authorization for fully protected species?

Answered live.

Question: I am looking for internship sites for undergraduate or graduate students specific to wildlife mitigation work. Interns at NREL have asked me about opportunities that incorporate wildlife research and clean energy effort.

Answer: I am aware of no specific internships related to this. However, research related to clean energy and compensatory mitigation is out there. Sources of this research include, but are not limited to: renewable energy companies, federal agencies, wildlife consultants, and universities (Matt Stuber).

Question: Is there any discussion concerning take at wind farms around rewarding a reduction of risk of take via methods such as curtailment as opposed to looking at it from a "no take" lense.

No answer was provided.

Question: Are the curtailment regimes at the Altamont Pass projects based on carcass data alone, or are they also based on acoustic data?

Answer: At this point, they are based on carcass data. The acoustic data is just starting to be collected this year and may inform future adjustments to the curtailment strategy (Katrina Smith).

Question: What is the recommended blanket curtailment guidelines (i.e., dates and cut-in speeds) for bats (such as northern long-eared bat)?

Answer: Project-specific guidance is best sought from the local USFWS Office. Here is the guidance specific to [northern long-eared bats](#) and for [Indiana bats](#). Guidance for tri-colored bats is forthcoming (Katrina Smith).