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December 3, 2021

Hon. Shannon Estenoz  
Assistant Secretary for Fish and Wildlife and Parks  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Assistant Secretary Estenoz:

The U.S. Fish and Wildlife Service (Service) recently published an advance notice of proposed rulemaking (ANPR), *Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds*, to gather information necessary to develop a proposed rule to authorize the incidental take of migratory birds. 86 *Fed. Reg.* 54,667 (Oct. 4, 2021). Specifically, the Service is requesting feedback on the creation of an authorization program that will achieve the dual purpose of providing conservation benefits for migratory birds and regulatory certainty for entities that pursue various activities including, importantly, renewable energy generation. *See id.* at 54,669.

The American Bird Conservancy, Defenders of Wildlife, Edison Electric Institute, International Brotherhood of Electrical Workers, National Audubon Society, Natural Resources Defense Council, Large Public Power Association, and National Wildlife Federation (“organizations”) offer these comments on the ANPR.

Collectively, our organizations are committed to being part of the climate solution and are working together to help deploy clean energy resources as quickly, responsibly, and cost-effectively as possible. The right policies and technologies can assist our collective work towards a 100 percent clean energy future.

Our organizations are also committed to avian protection and conservation. The electric industry and environmental non-profit organizations have collaborated with the Service over many years to develop and implement avian protection practices, fund innovative avian protection research,

and partner with nonprofit and governmental organizations to support conservation efforts through publications and workshops.<sup>1</sup>

We are now at a critical juncture in striving to meet our dual climate and biodiversity goals while also assuring the generation and delivery of clean, reliable electricity. One in four birds has been lost since 1970 and two-thirds are threatened with extinction in the coming years.<sup>2</sup> Addressing these unprecedented avian declines necessitates updated approaches that will deliver much needed conservation benefits. An authorization program under the Migratory Bird Treaty Act (MBTA) could provide just such an opportunity, while also providing a workable regulatory framework for industry.

Electric power system owners and operators are making significant investments to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure to integrate and deliver a diverse mix of central and distributed energy resources. We are committed to continuing and enhancing this transition while also providing for ongoing avian protection. The continued clean energy transformation will result in creation of union jobs during the planning, construction, operation, and maintenance of clean generation resources and the transmission and distribution needed to connect clean resources to the grid. This will also create jobs in the communities where these resources are located.

As our organizations continue the clean energy transformation, the siting and permitting of cleaner generating resources and the infrastructure needed to connect these resources to the energy grid will be critically important. Accelerating the deployment of these clean generating resources will be aided by more efficient permitting processes, including the implementation of new and workable regulatory paradigms under the MBTA.<sup>3</sup>

Our organizations, therefore, encourage the Service to implement the MBTA—including new regulatory approaches—in a manner that advances both conservation of avian species and the ongoing clean energy transformation. Specifically, the Service should account for the beneficial actions implemented and best practices developed by the electric power industry, establish general permits for certain activity types with conditions that are tailored to those industry activities, ensure the smooth and timely implementation of the program, and provide for

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<sup>1</sup> For example, in 1989, the Service, National Audubon Society, and the electric industry formed the Avian Power Line Interaction Committee (APLIC) to protect avian resources while enhancing reliable energy delivery. APLIC has developed effective and workable guidelines for avoiding and minimizing impacts to birds from collision and electrocution at power lines.

<sup>2</sup> Rosenberg, K. V. et al. 2019. Decline of the North American Avifauna. *Science* 365(6461). doi: 10.1126/science.aaw1313, and Wilsey, C, B Bateman, L Taylor, JX Wu, G LeBaron, R Shepherd, C Koseff, S Friedman, R Stone. *Survival by Degrees: 389 Bird Species on the Brink*. National Audubon Society: New York.

<sup>3</sup> In addition to soliciting feedback through this ANPR, the Service also finalized a rule revoking the previous administration's interpretation that incidental take of birds is not a violation of the MBTA. *Regulations Governing Take of Migratory Birds; Revocation of Provisions*, 86 *Fed. Reg.* 54,642 (Oct. 4, 2021); U.S. Fish & Wildlife Serv., Dept. of the Interior, Director's Order No. 225, *Incidental Take of Migratory Birds* (2021), <https://www.fws.gov/policy/do225.html> (provides guidance on how the Service will prioritize enforcement activities upon revocation of the previous administration's interpretation).

appropriate conservation fees and reasonable monitoring requirements that are not overly burdensome.

Our organizations look forward to continuing to work with the Service on this critical issue together.

Sincerely,

American Bird Conservancy  
Natural Resources Defense Council  
Defenders of Wildlife  
The Edison Electric Institute  
International Brotherhood of Electrical Workers  
The National Audubon Society  
The National Wildlife Federation  
The Large Public Power Council

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The Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for more than 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies, with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

American Bird Conservancy is a non-profit organization working to conserve and restore bird habitats, and to reduce threats to birds. ABC pursues its goals through scientific research and analysis; advocating for bird conservation at the local, state, regional, and federal levels; forming bird conservation partnerships with other organizations throughout the northern and southern hemispheres; and advocating for meaningful regulatory changes to address threats to birds.

Audubon protects birds and the places birds need, today and tomorrow. Audubon works throughout the Americas using science, advocacy, education, and on-the-ground conservation. 32 state programs, 27 nature centers, over 700 chapters, and our partners in the Americas give Audubon an unparalleled wingspan that reaches millions of people each year to inform, inspire, and unite diverse communities in conservation action. A nonprofit conservation organization since 1905, Audubon believes in a world in which people and wildlife thrive.

Defenders of Wildlife is dedicated to protecting native animals and plants in their natural communities. Founded in 1947, Defenders is a national conservation organization with nearly 2.2 million members and activists focused on wildlife and habitat conservation and protecting biodiversity.

Natural Resources Defense Council (NRDC) combines the power of more than three million members and online activists with the expertise of some 700 lawyers, scientists and policy advocates to solve the most pressing environmental issues we face today: curbing global warming and creating the clean energy future, reviving the world's oceans, defending endangered wildlife and wild places, protecting our health by preventing pollution, ensuring safe and sufficient water and fostering sustainable communities. We have been doing it since 1970, with a powerful track record of success.

National Wildlife Federation is one of the nation's largest conservation organizations with overall 6 million members and supporters and affiliates in 53 states and territories. Our mission is to unite all Americans to ensure wildlife thrive in a rapidly changing world

The IBEW represents approximately 775,000 active members and retirees who work in a wide variety of fields, including utilities, construction, telecommunications, broadcasting, manufacturing, railroads, and government. The IBEW has members in both the United States and Canada and stands out among the American unions in the AFL-CIO because it is among the largest and has members in so many skilled occupations.

The Large Public Power Council is comprised of 27 of the nation's largest public power systems in 21 states from Washington to Florida and California to New York as well as the Commonwealth of Puerto Rico that serve 30 million Americans, about 10 percent of the U.S. population. LPPC members are locally governed and directly accountable to consumers. We are not-for-profit and committed to reliability, affordability, and environmental stewardship for the consumers and communities we serve. LPPC advocates for policies that allow public power systems to build infrastructure, invest in communities, and provide reliable service at affordable rates. LPPC member utilities own and operate more than 80,000 MW of generation and over 35,000 circuit miles of high-voltage transmission lines. Together, LPPC members control 90 percent of the public agency owned, non-federal transmission investment in the nation.