



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
New Mexico Ecological Services Field Office  
2105 Osuna Road Ne  
Albuquerque, NM 87113-1001  
Phone: (505) 346-2525 Fax: (505) 346-2542  
<http://www.fws.gov/southwest/es/NewMexico/>  
[http://www.fws.gov/southwest/es/ES\\_Lists\\_Main2.html](http://www.fws.gov/southwest/es/ES_Lists_Main2.html)

In Reply Refer To:

September 14, 2021

Consultation Code: 02ENNM00-2018-SLI-0582

Event Code: 02ENNM00-2021-E-03885

Project Name: Holtec International New Mexico Spent Nuclear Fuel Storage Facility

Subject: Updated list of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

Thank you for your recent request for information on federally listed species and important wildlife habitats that may occur in your project area. The U.S. Fish and Wildlife Service (Service) has responsibility for certain species of New Mexico wildlife under the Endangered Species Act (ESA) of 1973 as amended (16 USC 1531 et seq.), the Migratory Bird Treaty Act (MBTA) as amended (16 USC 701-715), and the Bald and Golden Eagle Protection Act (BGEPA) as amended (16 USC 668-668c). We are providing the following guidance to assist you in determining which federally imperiled species may or may not occur within your project area and to recommend some conservation measures that can be included in your project design.

### **FEDERALLY-LISTED SPECIES AND DESIGNATED CRITICAL HABITAT**

Attached is a list of endangered, threatened, and proposed species that may occur in your project area. Your project area may not necessarily include all or any of these species. Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

If you determine that your proposed action may affect federally-listed species, consultation with the Service will be necessary. Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with

Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at [www.fws.gov/endangered/esa-library/index.html#consultations](http://www.fws.gov/endangered/esa-library/index.html#consultations).

The scope of federally listed species compliance not only includes direct effects, but also any interrelated or interdependent project activities (e.g., equipment staging areas, offsite borrow material areas, or utility relocations) and any indirect or cumulative effects that may occur in the action area. The action area includes all areas to be affected, not merely the immediate area involved in the action. Large projects may have effects outside the immediate area to species not listed here that should be addressed. If your action area has suitable habitat for any of the attached species, we recommend that species-specific surveys be conducted during the flowering season for plants and at the appropriate time for wildlife to evaluate any possible project-related impacts.

### **Candidate Species and Other Sensitive Species**

A list of candidate and other sensitive species in your area is also attached. Candidate species and other sensitive species are species that have no legal protection under the ESA, although we recommend that candidate and other sensitive species be included in your surveys and considered for planning purposes. The Service monitors the status of these species. If significant declines occur, these species could potentially be listed. Therefore, actions that may contribute to their decline should be avoided.

Lists of sensitive species including State-listed endangered and threatened species are compiled by New Mexico state agencies. These lists, along with species information, can be found at the following websites:

Biota Information System of New Mexico (BISON-M): [www.bison-m.org](http://www.bison-m.org)

New Mexico State Forestry. The New Mexico Endangered Plant Program:  
[www.emnrd.state.nm.us/SFD/ForestMgt/Endangered.html](http://www.emnrd.state.nm.us/SFD/ForestMgt/Endangered.html)

New Mexico Rare Plant Technical Council, New Mexico Rare Plants: [nmrareplants.unm.edu](http://nmrareplants.unm.edu)

Natural Heritage New Mexico, online species database: [nhnm.unm.edu](http://nhnm.unm.edu)

### **WETLANDS AND FLOODPLAINS**

Under Executive Orders 11988 and 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and floodplains, and preserve and enhance their natural and beneficial values. These habitats should be conserved through avoidance, or mitigated to ensure that there would be no net loss of wetlands function and value.

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We encourage you to use the National Wetland Inventory (NWI) maps in conjunction with ground-truthing to identify wetlands occurring in your project area. The Service's NWI program website, [www.fws.gov/wetlands/Data/Mapper.html](http://www.fws.gov/wetlands/Data/Mapper.html) integrates digital map data with other resource information. We also recommend you contact the U.S. Army Corps of Engineers for permitting requirements under section 404 of the Clean Water Act if your proposed action could impact floodplains or wetlands.

### **MIGRATORY BIRDS**

The MBTA prohibits the taking of migratory birds, nests, and eggs, except as permitted by the Service's Migratory Bird Office. To minimize the likelihood of adverse impacts to migratory birds, we recommend construction activities occur outside the general bird nesting season from March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until the young have fledged.

We recommend review of Birds of Conservation Concern at website [www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BCC.html](http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BCC.html) to fully evaluate the effects to the birds at your site. This list identifies birds that are potentially threatened by disturbance and construction.

### **BALD AND GOLDEN EAGLES**

The bald eagle (*Haliaeetus leucocephalus*) was delisted under the ESA on August 9, 2007. Both the bald eagle and golden eagle (*Aquila chrysaetos*) are still protected under the MBTA and BGEPA. The BGEPA affords both eagles protection in addition to that provided by the MBTA, in particular, by making it unlawful to "disturb" eagles. Under the BGEPA, the Service may issue limited permits to incidentally "take" eagles (e.g., injury, interfering with normal breeding, feeding, or sheltering behavior nest abandonment). For information on bald and golden eagle management guidelines, we recommend you review information provided at [www.fws.gov/midwest/eagle/guidelines/bgepa.html](http://www.fws.gov/midwest/eagle/guidelines/bgepa.html).

On our web site [www.fws.gov/southwest/es/NewMexico/SBC\\_intro.cfm](http://www.fws.gov/southwest/es/NewMexico/SBC_intro.cfm), we have included conservation measures that can minimize impacts to federally listed and other sensitive species. These include measures for communication towers, power line safety for raptors, road and highway improvements, spring developments and livestock watering facilities, wastewater facilities, and trenching operations.

We also suggest you contact the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division for information regarding State fish, wildlife, and plants.

Thank you for your concern for endangered and threatened species and New Mexico's wildlife habitats. We appreciate your efforts to identify and avoid impacts to listed and sensitive species in your project area. For further consultation on your proposed activity, please call 505-346-2525 or email [nmesfo@fws.gov](mailto:nmesfo@fws.gov) and reference your Service Consultation Tracking Number.

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Attachment(s):

- Official Species List
- Migratory Birds

## Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**New Mexico Ecological Services Field Office**

2105 Osuna Road Ne

Albuquerque, NM 87113-1001

(505) 346-2525

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## Project Summary

Consultation Code: 02ENNM00-2018-SLI-0582

Event Code: Some(02ENNM00-2021-E-03885)

Project Name: Holtec International New Mexico Spent Nuclear Fuel Storage Facility

Project Type: DEVELOPMENT

Project Description: Holtec seeks to store up to 8,680 metric tons of uranium in commercial spent fuel in the Holtec International Storage Module Underground “MAXimum” Capacity (HI-STORM UMAX) Storage System for a 40-year license term. Holtec is proposing to construct and operate the consolidated interim storage facility within an approximately 1,040 acre parcel including supporting facilities and supporting infrastructure (e.g., railroad spur and Site access road, utility lines). Construction of Phase I of the facility would disturb approximately 120 acres of land.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@32.57303846700003,-103.71548304672459,14z>



Counties: Lea County, New Mexico

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## Endangered Species Act Species

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

### Birds

NAME	STATUS
Northern Aplomado Falcon <i>Falco femoralis septentrionalis</i> Population: U.S.A (AZ, NM) No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1923">https://ecos.fws.gov/ecp/species/1923</a>	Experimental Population, Non- Essential

### Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

### Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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## Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
  2. The [Bald and Golden Eagle Protection Act](#) of 1940.
  3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Cassin's Sparrow <i>Aimophila cassinii</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA <a href="https://ecos.fws.gov/ecp/species/9512">https://ecos.fws.gov/ecp/species/9512</a>	Breeds Aug 1 to Oct 10

## Probability Of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

### Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

### Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

### Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

### No Data (—)

A week is marked as having no data if there were no survey events for that week.

### Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

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■ probability of presence   ■ breeding season   | survey effort   — no data

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Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

## Migratory Birds FAQ

**Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.**

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

**What does IPaC use to generate the migratory birds potentially occurring in my specified location?**

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [AKN Phenology Tool](#).

**What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?**

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

### **How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?**

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

### **What are the levels of concern for migratory birds?**

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

### **Details about birds that are potentially affected by offshore projects**

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

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Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

**What if I have eagles on my list?**

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

**Proper Interpretation and Use of Your Migratory Bird Report**

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

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