

When National Security Meets Endangered Species: Uncharted Legal Territory in the Gulf of Mexico

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On March 16, 2026, the Department of the Interior indicated that the Endangered Species Committee – a body, sometimes called the “God Squad,” that has not convened in more than 30 years – will hold a meeting to consider an Endangered Species Act exemption “with respect to oil and gas exploration, development, and production activities” in the Gulf of Mexico.¹ The committee has the power to exempt certain activities from the Act’s prohibition on federal actions that could jeopardize the continued existence of an endangered or threatened species. However, the committee ordinarily meets only to consider an *application* for such an exemption, and none is pending.

The Department of the Interior has made clear in a court filing that the committee is meeting to consider a broad exemption for a swath of oil and gas activities in the Gulf of Mexico based on a determination by the Secretary of Defense that the exemption is necessary for national security reasons. This exemption has never been invoked, and there are significant questions about how it functions and how opponents of its use may challenge it.

How does the Endangered Species Act work?

The codified purpose of the Endangered Species Act (ESA) is to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of” treaties regarding protection of species.² In passing the ESA, Congress declared a policy “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of” the ESA.³

To achieve its stated purpose, the ESA has several key parts. Section 4 specifies a process for the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to identify and list species as endangered or threatened and requires agencies to designate critical habitat that is essential for the conservation of listed species. Agencies must also develop recovery plans that specify actions necessary for listed species’ survival and eventual removal from the list.⁴ Section 9

¹ Endangered Species Committee Meeting Announcement, 91 Fed. Reg. 12,672 (Mar. 16, 2026), <https://www.federalregister.gov/documents/2026/03/16/2026-05242/endangered-species-committee-meeting-announcement>.

² 16 U.S.C. § 1531(b).

³ 16 U.S.C. § 1531(c)(1).

⁴ 16 U.S.C. § 1533.

prohibits the “take” — a defined term that includes non-lethal activities — of any listed species,⁵ while section 10 provides a process for permitting incidental take.⁶

Most relevant here, section 7 requires federal agencies to consult with the FWS or NMFS to ensure that their actions — including approving or funding activities of private actors — will not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat.⁷

The process requires several steps, through which the “action” agency (the agency undertaking, funding, or authorizing an activity) and consulting service (FWS or NMFS, depending on the potentially affected species) share information about the activity and determine its effects on listed species and their habitat.⁸ Formal consultation may conclude with the consulting service issuing a biological opinion (BiOp), which states the service’s opinion about the effect of the action, including whether the action is likely to jeopardize listed species or adversely modify their critical habitat.⁹ If it is, the service must identify reasonable and prudent alternatives to the proposed action that would not jeopardize listed species or adversely modify their critical habitat.¹⁰ The BiOp may also include an incidental take statement authorizing the take of species (otherwise prohibited by section 9) that will not jeopardize the species — this statement may include required measures to minimize the effects of the project.¹¹

How can federal actions be exempted from section 7’s “no-jeopardy” requirement?

Section 7 contains three provisions that may allow federal actions to be exempted from section 7’s no-jeopardy requirement (i.e. the requirement that agencies avoid actions that likely jeopardize the continued existence of a listed species or adversely modify their critical habitat).¹²

The Endangered Species Committee’s exemption process

Section 7 consultation may end with a conclusion that a federal action cannot be conducted without jeopardizing a species or adversely modifying critical habitat and no reasonably prudent alternatives are available. In such an instance, the federal action agency, the governor of the state where the

⁵ 16 U.S.C. § 1538.

⁶ 16 U.S.C. § 1539.

⁷ 16 U.S.C. § 1536.

⁸ 16 U.S.C. § 1536(a).

⁹ 16 U.S.C. § 1536(b)(3)(A).

¹⁰ 16 U.S.C. § 1536(b)(3)(A).

¹¹ 16 U.S.C. § 1536(b)(4).

¹² In addition to the exemptions detailed below, Congress has also in some instances carved out exceptions or create different processes for certain activities. See, e.g., CRS, *Endangered Species Act (ESA) Section 7 Consultation and Infrastructure Projects*, at 14 (Aug. 4, 2021), https://www.congress.gov/crs_external_products/R/PDF/R46867/R46867.2.pdf (hereinafter “CRS, ESA and Infrastructure Projects”).

action would occur, or an applicant for the relevant federal permit or license may apply for an exemption from section 7's no-jeopardy requirement.¹³

The decision whether to grant such an exemption lies with the Endangered Species Committee. The statute directs that the committee has specific members: the Secretary of the Interior, the Secretary of Agriculture, the Chairman of the Council of Economic Advisors, the Administrator of the Environmental Protection Agency, the Administrator of the National Oceanic and Atmospheric Administration, and one representative for each affected state (recommended by the governor of the state and appointed by the president).¹⁴ Because of its power to make decisions that may jeopardize the continued existence of species, this committee has been coined the "God Squad."¹⁵

The exemption process is lengthy, and the statute and implementing regulations contain many requirements.¹⁶ Regulations require that when the Secretary of the Interior or Secretary of Commerce (as relevant) receives an application for exemption, the secretary must publish a notice in the Federal Register with details about the applicant and the proposed action, the results of the consultation, and information about how the public can obtain a copy of the application.¹⁷ The secretary must, by statute, determine that the applicant has met listed threshold requirements for the exemption process.¹⁸ The statute and regulations require that if the application clears all required hurdles, the secretary will hold a formal hearing (which must be noticed in the Federal Register and open to the public) in consultation with the committee, and conducted by a designated administrative law judge.¹⁹ The secretary must then prepare a report, which the statute directs must describe alternatives to the proposal that would protect the species and its habitat, evidence of the significance of the project and whether it is in the public interest, any mitigation measures or enhancement measures that the committee should consider, and whether the agency and applicant have complied with requirements that they avoid an irretrievable commitment of resources that would foreclose any alternatives to the proposal.²⁰ Regulations give the committee authority to hold

¹³ 16 U.S.C. § 1536(g)(1).

¹⁴ 16 U.S.C. §§ 1536(e)(3), (g)(2)(B). If no state is affected, the president will select from a list of individuals nominated by the relevant secretary. 50 C.F.R. § 451.03(b)(2).

¹⁵ The committee's power also has limits, notably that the committee cannot exempt any action if the Secretary of State timely certifies that the exemption would violate an international treaty or any other international obligation of the United States. 16 U.S.C. § 1536(i); 50 C.F.R. § 452.03(e).

¹⁶ See generally Congressional Research Service, *Endangered Species Act (ESA): the Exemption Process*, (Jan. 27, 2017), https://www.congress.gov/crs_external_products/R/PDF/R40787/R40787.15.pdf (hereinafter "CRS, *ESA Exemption Process*").

¹⁷ 50 C.F.R. § 451.02(h).

¹⁸ 16 U.S.C. § 1536(g)(3). Specifically, the secretary must determine that the applicant has "carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not" jeopardize the continued existence of a species or adversely modify a listed species' critical habitat, had conducted any required assessments about effects on endangered species, and had "refrained from making any irreversible or irretrievable commitment of resources" that would foreclose the availability of reasonable and prudent alternatives. The secretary must deny any application that has failed these threshold requirements. 16 U.S.C. § 1536(g)(3)(B). See also 50 C.F.R. §§ 451.02(f), 452.03.

¹⁹ 16 U.S.C. § 1536(g)(4); 50 C.F.R. § 452.05.

²⁰ 16 U.S.C. § 1536(g)(5).

additional hearings (which must be noticed in the Federal Register and open to the public), conduct additional fact-finding, and issue subpoenas.²¹

The committee then makes its final determination whether to grant an exemption. The statute directs that the committee's decision must be based on the need for the action, the unavailability of alternatives, and a balancing of benefits and harms, including economic considerations.²² If the committee grants an exemption – which requires a vote of 5 or more of the 7 members²³ – it must also establish mitigation measures to minimize the action's adverse effects on species and habitat.²⁴ Actions that comply with the exemption and mitigation measures do not violate ESA section 9's bar on "takes" of listed species.²⁵

Any resulting exemption of an action from the no-jeopardy requirement is permanent, unless the secretary later finds that the action would result in the extinction of a species that was not the subject of the original consultation process.²⁶

Presidential disaster determination exemption

Apart from the normal exemption process, the statute also contains a section 7 exemption for certain activities in response to disasters. When the president declares a "major disaster area" under the Disaster Relief and Emergency Assistance Act, the president can, on his or her own, determine that a project to repair or replace a public facility is entitled to an exemption.²⁷ While the exemption is powerful, it is limited, as it applies only to certain rebuilding projects in certain situations.

To use the exemption, the president must determine that the project: "(1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) [involves] an emergency situation which does not allow the ordinary [exemption] procedures of this section to be followed."²⁸

How the provision would work in practice is unclear because no president has invoked this section, so its process has not been tested.²⁹ The statute appears to suggest that the Endangered Species Committee would still be convened if the president uses this exemption process, as it states, "the committee shall accept the determinations of the president under this subsection."³⁰ But the statute also appears to envision the president fulfilling the role of the secretary (in preparing the report setting forth information needed for committee review) and of the committee (in making the

²¹ 50 C.F.R. § 453.04–453.06.

²² 16 U.S.C. § 1536(h)(1)(A).

²³ State representatives share a single vote. 50 C.F.R. § 453.05(d).

²⁴ 16 U.S.C. § 1536(h)(1)(B).

²⁵ 16 U.S.C. § 1536(o).

²⁶ 16 U.S.C. § 1536(h)(2).

²⁷ 16 U.S.C. § 1536(p).

²⁸ 16 U.S.C. § 1536(p).

²⁹ See CRS, *ESA Exemption Process*, at 10 (noting the lack of clarity).

³⁰ 16 U.S.C. § 1536(p).

exemption determination): “the President is authorized to make the determinations required by subsections (g) and (h) of this section.”³¹ While the disaster exemption does not explicitly alter the requirement that an exemption process can begin only after formal consultation is complete, the president is charged with making threshold determinations about, among other things, whether the applicant has engaged in that process in good faith.³²

National security exemption

Finally, section 7 provides for an exemption for national security reasons: “Notwithstanding any other provision of this chapter, the committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.”³³

Like the presidential disaster determination exemption, this exemption has not yet been tested, and the process around it is not entirely clear. The Congressional Research Service explains, “Technically, for the option to be exercised, the ESC would have to be convened and receive the [secretary’s] report. . . . The ESC would have a formal vote, even though the outcome would not be discretionary: the ESC is directed to approve the exemption if the Defense Secretary makes the finding.”³⁴ In other words, the exemption process may proceed as normal – only after the conclusion of a section 7 consultation process, upon the secretary’s determination that threshold requirements are met, and after hearing and preparation of the secretary’s report – but the results of that process would be guaranteed. Even if so, questions remain, such as whether the ESA’s normal requirement that the committee “establish[] reasonable mitigation and enhancement measures . . . as necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned”³⁵ applies even in the context of a national security exemption.

How often has the Endangered Species Committee granted exemptions?

The Endangered Species Committee has not convened in more than 30 years. The exemption process has rarely been initiated and has not always resulted in granted exemptions. The following are the only three instances where the exemption process has proceeded to a final decision:

Tellico Dam: Exemption denied. Shortly after Congress passed and President Carter signed the Endangered Species Act reenactment in 1978, which created the exemption process, the Tennessee Valley Authority initiated the process for the Tellico Dam on the Little Tennessee River.³⁶ The FWS

³¹ 16 U.S.C. § 1536(p).

³² 50 C.F.R. § 451.02(d); 16 U.S.C. §1536(g)(3)(A). One CRS report asserts that this provision gives the President the power to fully exempt qualifying federal actions from the section 7 consultation requirements generally. CRS, *ESA and Infrastructure Projects*, at 14. Separate regulations allow certain projects responding to an emergency to be undertaken even without first completing formal consultation. See 50 C.F.R. § 402.05. In these circumstances, formal consultation occurs after the action is complete.

³³ 16 U.S.C. § 1536(j); 50 C.F.R. § 453.03(d).

³⁴ CRS, *ESA Exemption Process*, at 4.

³⁵ 16 U.S.C. § 1536(h)(1)(B).

³⁶ This project was the subject of the Supreme Court’s decision in *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978), in which the Court held that the Endangered Species Act applied to the dam and that the snail

had determined that the dam would jeopardize the continued existence of the snail darter, a small fish. In early 1979, the Endangered Species Committee unanimously denied the exemption for the dam.³⁷

Greyrocks Dam: Exemption granted. Also shortly after the creation of the exemption process, the Endangered Species Committee convened to consider an exemption request for the Greyrocks Dam on the Platte River, which the FWS had determined would jeopardize the survival of the whooping crane. In early 1979, the committee unanimously decided to grant an exemption for the dam.³⁸

Oregon timber sales: Some exemptions granted, projects withdrawn. The Bureau of Land Management (BLM) in 1990 proposed a program of timber sales — logging projects — in lands it managed in Oregon. The FWS determined that 52 of these sales would jeopardize the continued existence of the northern spotted owl. BLM initiated the exemption process for 44 of those sales. The Secretary of the Interior concluded that 31 of those sales were inappropriate for an exemption; the committee in 1992 approved by a split vote an exemption for the remaining 13 sales. After environmental groups sued, BLM withdrew the sales from its timber program.³⁹

In addition to these three instances where the exemption process concluded with exemption or denial, in three other instances between 1979 and 1986 agencies or permit applicants initiated the exemption process but withdrew their exemption applications before the process was complete.⁴⁰

As noted above, the presidential disaster declaration exemption and national security declaration have never been invoked.

Can Endangered Species Committee decisions be challenged in court?

Endangered Species Committee decisions are challengeable under the Administrative Procedure Act (APA).⁴¹ Courts will thus hold committee decisions unlawful if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.⁴² Challenges are to be filed directly in a U.S. Court of Appeals.⁴³

dam was protected by the Act, and as a result enjoined further construction of the dam. Congress created the exemption process in response to the case and created a special provision that would automatically grant the project an exemption if the Endangered Species Committee failed to conclude its process by a certain date.

³⁷ See CRS, *ESA Exemption Process*, at Appendix A. Later that year, however, Congress passed and President Carter signed legislation with an exemption specifically for the dam. Energy and Water Development Appropriation Act, Pub. Law No. 96-69, 93 Stat. 437, 449 (1979).

³⁸ CRS, *ESA Exemption Process*, at Appendix B.

³⁹ CRS, *ESA Exemption Process*, at Appendix C; *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993).

⁴⁰ CRS, *ESA Exemption Process*, at Appendix D.

⁴¹ 16 U.S.C. § 1536(n); 5 U.S.C. § 706.

⁴² 5 U.S.C. § 706(2)(A).

⁴³ 16 U.S.C. § 1536(n).

There has been just one substantive challenge to a committee exemption decision, but it resulted only in a decision about the procedures that apply to the committee.

After the committee granted an exemption for certain BLM timber sales in 1992, environmental groups filed a petition for review in the Court of Appeals for the Ninth Circuit. As part of that challenge, the groups asked for discovery into allegedly improper communications between the White House and individual committee members. The court agreed that the committee's proceedings were subject to the APA's bar on *ex parte* communications, a rule intended to ensure that agency decisions are "made on a public record and are not influenced by private, off-the-record communications from those personally interested in the outcome."⁴⁴ The Court further explained the importance of a transparent process:

The public's right to attend all committee meetings, participate in all committee hearings, and have access to all committee records would be effectively nullified if the committee were permitted to base its decisions on the private conversations and secret talking points and arguments to which the public and the participating parties have no access.⁴⁵

Because the existence of *ex parte* communications would render the record of the committee's decision incomplete, the court ordered the committee to hold an evidentiary hearing to determine the nature, extent, and content of *ex parte* communications — information that would allow the court to ultimately determine whether the committee had violated the APA.⁴⁶ The court, however, never reached the challengers' arguments about other flaws in the committee's decision because BLM decided not to move forward with the exempted timber sales.

What do we know about the Trump administration's plan to convene the Endangered Species Committee?

So far, we know little about the administration's plans to convene the Endangered Species Committee for the first time in more than 30 years. The Department of the Interior published a notice in the Federal Register on March 16, 2026, stating that the committee will meet on March 31 "regarding an exemption under the Endangered Species Act with respect to oil and gas exploration, development, and production activities in the Gulf of America associated with the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement Outer Continental Shelf Oil and Gas Program." A court filing now provides a sliver of additional information, including that the administration is poised to invoke the national security exemption for the first time.⁴⁷

⁴⁴ *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534, 1539–40 (9th Cir. 1993) (quoting *Raz Inland Navigation Co. v. Interstate Commerce Comm'n*, 625 F.2d 258, 260 (9th Cir. 1980)); see also 5 U.S.C. § 557(d)(1).

⁴⁵ 984 F.2d at 1542.

⁴⁶ 984 F.2d at 1549–50.

⁴⁷ See Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Temporary Restraining Order, *Center for Biological Diversity v. Burgum*, No. 1:26-cv-940-RC (D.D.C. Mar. 25, 2026).

The meeting notice diverges from historical practice

The notice is unusual in several respects.

The fact that the committee is being convened is itself a rarity. The committee has convened to consider exemption requests only three times since its establishment in 1978, and most recently in 1991–1992.⁴⁸

The notice provides few details expected for a committee meeting, providing the public little information about the issue that the committee will consider or what species are at risk. A committee meeting notice would also normally come only after a series of other notices about the application, threshold findings, and hearings.

Notices around the most recent committee convening — concerning its consideration of the application to exempt BLM timber sales in Oregon during the George H. W. Bush administration — provides a helpful contrast. The series of notices preceding that meeting explain the application and process, indicate how the public can get more information, and show that multiple public hearings occurred before the committee meeting, in a process that extended more than seven months:

- September 25, 1991: The Department of the Interior published a notice in the Federal Register that the Bureau of Land Management had filed an application with the Secretary of the Interior seeking an exemption from section 7 for timber sales on 44 tracts in Oregon.⁴⁹ The notice indicated the next step in the process (a determination by the secretary that the application met basic requirements), cited applicable law, and provided information about how the public could obtain a copy of the exemption application.⁵⁰ The notice also described the conclusion of the consultation process: that the sales are likely to jeopardize the continued existence of the spotted owl, a listed species.⁵¹
- October 22, 1991: The Department of the Interior published a notice that the secretary had determined that BLM's application met all threshold requirements.⁵² The notice previewed the next steps in the process: a hearing and preparation of the secretary's report.⁵³ The notice again provided information about the consultation process and how the public could obtain a copy of the exemption application.⁵⁴
- November 13, 1991: The Department in a third Federal Register notice explained that the secretary had designated an Administrative Law Judge to conduct a fact-finding hearing to develop the record for consideration of the exemption application.⁵⁵ In addition to

⁴⁸ In the three additional instances where exemption requests were filed, the committee never met.

⁴⁹ Endangered Species Committee, Notice of Exemption Application, 56 Fed. Reg. 48,548 (Sept. 25, 1991).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Endangered Species Committee, Exemption Application, 56 Fed. Reg. 54,562 (Oct. 22, 1991).

⁵³ *Id.*

⁵⁴ *Id.* at 54,562–63.

⁵⁵ Endangered Species Committee, Appointment of Administrative Law Judge, Establishment of Dates and Locations for Prehearing Conference and Hearing, and Other Hearing-Related Matters, 56 Fed. Reg. 57,633 (Nov. 13, 1991).

information about the date, time, and location of the hearing (to be held January 8, 1992), the notice explained the applicable law and the planned scope of the hearing.⁵⁶ It also provided information about the exemption process generally and the finding required for the committee to grant an exemption.⁵⁷ Finally, the notice provided more detailed information about the application before the committee and particular questions the committee would seek to answer in resolving the exemption application.⁵⁸

- May 5, 1992: After an additional notice announcing another public hearing in February 1992, the secretary and committee published that the committee would meet on May 14, 1992 to determine whether to grant the exemption request.⁵⁹ In addition to again explaining how members of the public could obtain copies of the exemption application, the notice stated how the public could review or obtain copies of the secretary's report.⁶⁰

The Trump administration's meeting notice strikes a stark contrast.⁶¹ The notice does not:

- indicate with any specificity the agency action that the committee will consider exempting from section 7, but instead references "oil and gas exploration, development, and production activities in the Gulf" generally
- indicate what entity has applied for a section 7 exemption
- provide any information about whether or when section 7 consultation about the relevant action occurred or what the results of that consultation were
- say whether the secretary has made a determination about threshold requirements for an exemption application to move forward
- indicate whether the secretary has prepared a report
- list which species' continued existence would be jeopardized or whose habitat would be adversely affected by an activity for which an exemption is sought
- indicate how the public can obtain a copy of any exemption application (or any other information)
- reference the governing law (apart from the section establishing the Endangered Species Committee) or indicate what determinations the committee will make at the meeting or on what basis
- invite the public to attend the meeting in person, but instead provides a link for the public to view the meeting on YouTube

⁵⁶ *Id.* at 57,633–34.

⁵⁷ *Id.* at 57,634.

⁵⁸ *Id.* at 57,635–36.

⁵⁹ Endangered Species Committee, Notice of Meeting, 57 Fed. Reg. 19,299–300 (May 5, 1992).

⁶⁰ *Id.* at 19,300. The committee reported its decision on the exemption application by a further Federal Register notice. Endangered Species Committee, Decision, 57 Fed. Reg. 23,405–08 (June 3, 1992).

⁶¹ See Endangered Species Committee Meeting Announcements, 91 Fed. Reg. 12,672 (Mar. 16, 2026), <https://www.federalregister.gov/documents/2026/03/16/2026-05242/endangered-species-committee-meeting-announcement>.

A new government filing indicates that the administration intends to invoke the national security exemption for oil and gas activities in the Gulf of Mexico

President Trump has repeatedly called for the committee to meet since his second term began.⁶² In his order declaring a national “energy emergency,” Trump ordered the committee to convene at least quarterly to consider exemption requests, to review such requests quickly, and to identify ESA-related “obstacles to domestic energy infrastructure” and potential reforms.⁶³ He directed the committee to give similar treatment to timber production projects in a separate order.⁶⁴ And he raised the specter of invoking national security exemption for commercial space industry projects in an August 2025 executive order.⁶⁵ Until now, however, the committee has not convened, as it has had no occasion to consider any application for a section 7 exemption, its only mandate under the Endangered Species Act.

Even now, there is no application for an exemption for the committee to review. Instead, the Secretary of the Interior appears to have convened the committee to consider exempting a broad set of activities using the never-before-invoked national security exemption. In a March 25, 2026, responsive filing in a lawsuit challenging the committee’s convening (discussed below), the government stated, “the Secretary of War found it necessary for reasons of national security to exempt from the ESA’s requirements all Gulf of America oil and gas exploration and development activities associated with the [Bureau of Ocean Energy Management (BOEM)] and [Bureau of Safety and Environmental Enforcement’s (BSEE)] Outer Continental Shelf Oil and Gas Program.”⁶⁶ The Department of the Interior confirmed that it had not received an application for an exemption.⁶⁷ In that filing, the government also asserts that the “notwithstanding any other provision” language in the national security exceptions means that no other procedural provisions in section 7 apply, including the requirement for an application, a hearing, or a secretary’s report.⁶⁸

The notice may relate to a May 2025 BiOp by NMFS regarding oil and gas exploration, development, and production activities in the Gulf to be approved by BOEM and BSEE and the recent approval of a

⁶² See generally Bobby Magill, *Trump’s Endangered Species ‘God Squad’ Hasn’t Met Despite Orders*, BLOOMBERG LAW (Dec. 18, 2025), <https://news.bloomberglaw.com/environment-and-energy/trumps-endangered-species-god-squad-hasnt-met-despite-orders>.

⁶³ Declaring a National Energy Emergency, Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>; see also Erika Kranz, Harvard Environmental & Energy Law Program, *One Year of Trump’s ‘Energy Emergency’ In Context and in Court*, (Jan. 21, 2026), <https://eelp.law.harvard.edu/one-year-of-trumps-energy-emergency-in-context-and-in-court/>.

⁶⁴ Immediate Expansion of American Timber Production, 90 Fed. Reg. 11,365 (Mar. 1, 2025), <https://www.federalregister.gov/documents/2025/03/06/2025-03695/immediate-expansion-of-american-timber-production>.

⁶⁵ Enabling Competition in the Commercial Space Industry, 90 Fed. Reg. 40,219 (Aug. 13, 2025), <https://www.federalregister.gov/documents/2025/08/19/2025-15822/enabling-competition-in-the-commercial-space-industry>.

⁶⁶ Memorandum of Points and Authorities in Opposition to Plaintiff’s Motion for Temporary Restraining Order, *Center for Biological Diversity v. Burgum*, No. 1:26-cv-940-RC, at 7 (D.D.C. Mar. 25, 2026).

⁶⁷ *Id.*

⁶⁸ *Id.*

deepwater drilling project. The 2025 BiOp is a programmatic document that analyzes oil and gas activities in the Gulf broadly, encompassing a 95 million acre area and activities ranging from leasing to construction, drilling, production, vessel operations, and more.⁶⁹ While the BiOp concluded that oil and gas activities had likely effects on a number of listed species, the most severe effects would be on Rice's whale — a species thought to have only about 50 individuals.⁷⁰ The BiOp concluded that vessel strikes related to oil and gas activities were likely to jeopardize the continued existence of this species.⁷¹ As the ESA requires, the BiOp then listed NMFS's proposed reasonable and prudent alternatives: a suite of steps to avoid Rice's whale vessel strikes.⁷²

Individual agency actions have extended from that programmatic document. For instance, the administration on March 13, 2026, notified BP Exploration & Production that BOEM had approved the company's plan to drill new deepwater wells in the Gulf — the controversial Kaskida Project.⁷³ The approval notice references the May 2025 BiOp and required protective measures. That decision might have been an event that triggers the running of a 90-day deadline for the filing of an exemption application for a federal action that involves a permit or lease applicant.⁷⁴ BP has stated that it has not applied for an exemption related to the project.⁷⁵ But if the national security exemption broadly relieves all oil and gas activities in the Gulf from complying with ESA section 7, this project is likely included.

The decision to convene the committee has already been challenged

The Center for Biological Diversity (CBD) filed suit on March 18, 2026 alleging that the notice about the forthcoming Endangered Species Committee meeting is illegal.⁷⁶ CBD alleges that the Secretary of the Interior's decision to convene the committee violates the APA because it has not published a

⁶⁹ National Marine Fisheries Service, Biological and Conference Opinion on Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement's Oil and Gas Program Activities in the Gulf of America, at 35–78, 123 (May 20, 2025), <https://www.fisheries.noaa.gov/s3/2025-05/BOEM-BSEE-Gulf-of-America-Oil-and-Gas-Program-BiOp-5.20.25.pdf>.

⁷⁰ *Id.* at 150–51, 165–66.

⁷¹ *Id.* at 574.

⁷² *Id.* at 577–81.

⁷³ Letter from U.S. Department of the Interior Bureau of Ocean Energy Management to Betsy Cleland, BP Exploration & Production Inc. (Mar. 13, 2026), <https://www.data.boem.gov/PDFDocs/Scan/PLANS/63/63198.pdf>; see also Bobby Magill, *Endangered Species 'God Squad' to Meet to Promote Oil Agenda*, BLOOMBERG LAW (Mar. 14, 2026), <https://news.bloomberglaw.com/environment-and-energy/endangered-species-god-squad-to-meet-to-promote-oil-drilling>; Press Release: Senator Markey, Rep. Huffman Lead Colleagues in Opposing BP's Reckless Offshore Drilling Plan (Aug. 26, 2025), <https://www.markey.senate.gov/news/press-releases/senator-markey-rep-huffman-lead-colleagues-in-opposing-bps-reckless-offshore-drilling-plan>.

⁷⁴ 16 U.S.C. § 1536(g)(2)(A).

⁷⁵ Bobby Magill, *BP Didn't Ask for Gulf 'God Squad' Exemption From Species Law*, BLOOMBERG LAW (Mar. 19, 2026), <https://news.bloomberglaw.com/environment-and-energy/bp-didnt-ask-for-gulf-god-squad-exemption-from-species-law>.

⁷⁶ Complaint, *Center for Biological Diversity v. Burgum*, No. 1:26-cv-940-RC (D.D.C. Mar. 25, 2026), <https://biologicaldiversity.org/programs/government-affairs/pdfs/2026-03-18-Complaint-God-Squad-Lawsuit.pdf>.

notice of the receipt of an exemption application with required information,⁷⁷ or provided other information required to be public. CBD asserts that the livestreamed meeting is not meaningfully “open” to the public, as required by the ESA and that the secretary has also disregarded other requirements about hearings and public involvement.⁷⁸ CBD alleges that the convening is unlawful because key prerequisites for an exemption application have also not been met, as the exemption process may only be invoked where a service makes a jeopardy determination and no reasonably prudent alternatives are available (but in the case of oil and gas activities, the service, NMFS, had identified alternatives to avoid jeopardy to Rice’s whale).⁷⁹

CBD sought an order requiring the administration to provide access to information, documents, and meetings as required by the Endangered Species Act,⁸⁰ and a temporary restraining order to prohibit the secretary from convening the committee.⁸¹ On March 27, 2026, the district court denied CBD’s motion for a temporary restraining order, explaining that court likely lacked jurisdiction over CBD’s challenge, as announcing or holding the committee meeting was not likely a final agency action.⁸²

What happens if the Trump administration invokes the national security exemption?

The unusual nature of the Endangered Species Committee meeting notice and its mention of oil and gas production led some to question whether the administration intends to invoke the national security exemption to section 7 compliance. The administration has now confirmed this in its responsive filing in the CBD lawsuit.⁸³

Triggering the exemption is unprecedented. Yet it is consistent with the administration’s broader pattern of using exceptions, streamlined procedures, and unilateral powers in unprecedented and broad ways; of taking steps that prioritize fossil fuel development; and of invoking national security in unusual contexts.⁸⁴

⁷⁷ *Id.* at 20 (citing 16 U.S.C. § 1536(g)(2)(B)(ii); 50 C.F.R. § 451.02(h)).

⁷⁸ *Id.* at 21–22.

⁷⁹ *Id.* at 23 (citing 16 U.S.C. § 1536(g)(1); 50 C.F.R. § 402.14(h)(2)).

⁸⁰ *Id.* at 24.

⁸¹ Motion for Temporary Restraining Order, *Center for Biological Diversity v. Burgum*, 1:26-cv-00940-RC (D.D.C. Mar. 19, 2026). The district court denied the request for a temporary restraining order on March 27, 2026, *Center for Biological Diversity v. Burgum*, 1:26-cv-00940-RC (D.D.C. Mar. 27, 2026).

⁸² Order Denying Plaintiff’s Motion for Temporary Restraining Order, *Center for Biological Diversity v. Burgum*, No. 1:26-cv-940-RC (D.D.C. Mar. 27, 2026).

⁸³ Memorandum of Points and Authorities in Opposition to Plaintiff’s Motion for Temporary Restraining Order, *Center for Biological Diversity v. Burgum*, No. 1:26-cv-940-RC, at 7 (D.D.C. Mar. 25, 2026).

⁸⁴ See, e.g., Ari Peskoe, Carrie Jenks, and Sara Dewey, Harvard Environmental & Energy Law Program, *The Trump Administration’s Aggressive Anti-Regulatory, Pro-Fossil Fuel Directives* (Apr. 23, 2025), <https://eelp.law.harvard.edu/the-trump-administrations-aggressive-anti-regulatory-pro-fossil-fuel-directives/>; Erika Kranz, Harvard Environmental & Energy Law Program, *Federal Court Vacates Wind Energy Authorization Pause* (Dec. 16, 2025) (explaining how a court rejected the administration’s blanket pause on wind authorizations and the administration’s reliance on a presidential directive rather than a typical administrative process); Erika Kranz, Harvard Environmental & Energy Law Program, *One Year of Trump’s ‘Energy Emergency’*

It is also consistent with the administration's efforts to link energy and national security. President Trump's day-one "energy emergency" declaration explicitly linked energy production from his preferred sources to national security.⁸⁵ The administration recently reinforced its view of the link when it invoked the Defense Production Act to direct a company to restore operations of an oil pipeline, citing, among other things, disruption of oil shipping because of the war with Iran.⁸⁶

As explained above, the national security exemption has never been used before, and exactly how it fits with the Endangered Species Committee's role in determining whether exemption is warranted is not clear. How legal challenges might work is also uncertain. Challengers to a normal exemption process could argue that the secretary or committee had violated statutorily required procedures or that the committee's ultimate exemption determination was arbitrary and capricious or, for instance, relied on inappropriate factors. It is unclear if those types of arguments could be raised — or be successful — in the context of a national security exemption.

Additional questions include:

- Even if the normal threshold requirements apply — that a consultation process ends with a jeopardy finding, that the Secretary of the Interior determines that threshold requirements are met, that the secretary holds a hearing and prepares a report — would an interested party be able to successfully challenge deviation from those requirements, if the committee's decision is preordained because it lacks any discretion?⁸⁷
- Does the committee need to prepare a record for its decision beyond citing a finding by the Secretary of Defense "that such exemption is necessary for reasons of national security"? Does the ESA's normal requirement that the committee establish required mitigation and enhancement measures apply?
- Would a court entertain arguments that a Secretary of Defense national security determination is arbitrary and capricious, when courts often see no role for themselves in reviewing the executive branch's factual assertions about national security, and there is only a limited standard for the court to apply?⁸⁸
- Would courts engage with arguments about pretext?
- Even if a court found a procedural violation in the committee's work, what remedy could be meaningful if the committee could not reach a different result on remand?

In Context and in Court, (Jan. 21, 2026), <https://eelp.law.harvard.edu/one-year-of-trumps-energy-emergency-in-context-and-in-court/> (describing use of Federal Power Act section 202(c) emergency powers in novel ways and creating expedited National Environmental Policy Act procedures for a set of favored energy projects).

⁸⁵ Declaring a National Energy Emergency, Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

⁸⁶ Press Release, U.S. Department of Energy, Secretary Wright Directs Sable Offshore to Restore the Santa Ynez Unit and Pipeline (Mar. 13, 2026), <https://www.energy.gov/articles/secretary-wright-directs-sable-offshore-restore-santa-ynez-unit-and-pipeline>.

⁸⁷ 16 U.S.C. § 1536(j) ("the committee shall grant an exemption").

⁸⁸ See, e.g., *Lee v. Garland*, 120 F.4th 880, 889 (D.C. Cir. 2024).

The March 31, 2026, meeting will at a minimum provide more information on how the administration plans to use the national security exemption and how it believes it functions. If the administration invokes the national security exemption as it plans to, additional litigation is likely.

We expect the administration will argue that the exemption can apply to a broad set of activities (rather than to a single action, as the exemption process has previously been used), that the exemption fully relieves the government from complying with section 7 for those activities (so no procedural or substantive obligations about consultation or the committee's process apply), and that courts have little role in reviewing whether invoking the exemption was proper. We will be watching to see how this issue develops and how courts address these questions.