

Trump Admin Invites Legal Fights With Clean Energy Moves

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[M. Benjamin Cowan](#)

Ben Cowan, a partner in Troutman Pepper Locke's Energy Industry Group, was quoted in the August 8, 2025 *Law360* article, "[Trump Admin Invites Legal Fights With Clean Energy Moves](#)."

Meanwhile, the memorandum essentially cuts off the industry's ability to consult with key agencies such as the U.S. Fish & Wildlife Service to obtain guidance or permits, said Troutman Pepper Locke LLP partner Ben Cowan, who works on renewable energy project permitting.

"The renewables industry has a culture of voluntary consultation, engagement and minimization in collaboration with the Fish & Wildlife Service," Cowan said. "The rug has been yanked out from under the industry on doing that at this point."

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Attorneys say it's a curious move considering that the DOI earlier this year restored a 2017 legal opinion that said the government can't prosecute companies for incidental take under the MBTA. Cowan, of Troutman, said the agency may be signaling that it intends to classify avian mortality as "intentional" take under the law, affecting both new and existing wind projects regardless of where they are.

"That could effectively criminalize the operation of every wind farm in the country," Cowan said. "How could they justify claiming that the purpose of a wind farm is to kill birds?"

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Attorneys say that only makes it tougher to advise renewable developers on how they should factor the administration's recent moves into their project planning. There aren't any clear, obvious or one-size-fits-all solutions, Troutman's Cowan said.

"The one universal piece of advice we can give: If you can avoid impacts to protected resources, do it," Cowan said. "Beyond that, it's really imperative that developers consult with their biological consultants and outside counsel and look at the risk profile of each project individually, where it is in the development cycle, and all of the factors specific to that project, to determine whether there's a path forward and what that path may look like."

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