

OPEN SEASON ON REGS: ADVANCING THE BARRED OWL CRA

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Background

Congress is working to halt a Biden-era scheme to waste \$1.35 billion killing owls. Under the U.S. Fish and Wildlife Service (USFWS) plan, the agency would support killing 450,000 barred owls.

The USFWS issued a its final record of decision on August 22, 2024, and published it in the Federal Register on September 6, 2024, which is within the Congressional Review Act (CRA) lookback period. In the decision, the USFWS makes clear the agency's intent to issue a Migratory Bird Special Purpose permit to kill the barred owls and implement the management strategy. According to the most recent Unified Agenda, the agency is planning to move forward with this decision.

This record of decision includes a review of all “alternatives” considered and discussion of environmental impact, but it does not include a discussion or evidence consideration of economic or fiscal impact. However, related contracts issued by the federal government reveal the substantial cost to taxpayers.

The Barred Owl Management Strategy

According to the USFWS, the decision was made “to protect imperiled northern and California spotted owls in Washington, Oregon, and California from invasive barred owls.” To be clear, the northern owls and California spotted owls do not need protection from human threats or man-made habitat degradation; the agency asserts the “threatened” owls need the USFWS to step in and provide protection from *other owls* in the Pacific Northwest.

Of note, the “bully” here is the barred owl, which is also native to North America. In other words, the Biden Administration intended not only to pick winners and losers fiscally – they intended to pick them ecologically.

The Solution

Congressman Troy Nehls (R-TX-22) introduced a House joint resolution of disapproval under the CRA to halt implementation of the Barred Owl Management Strategy by the USFWS.

This bipartisan effort was preceded by a letter from Members of Congress to Interior Secretary Burgum stating, “In the spirit of fiscal responsibility and ethical conservation,

we urge you to halt all spending on this plan to mass kill a native, range-expanding North American owl species.” The letter goes on to make it clear that the Members view the plan as outside the scope of the agency’s statutory authority given that the “threat” identified by the USFWS relates to the natural expansion of the barred owls’ range, which is consistent with the “dynamism of ecological systems.”

Adopting this CRA resolution of disapproval would reinstate the Congressional intent and right-size interpretation of agency’s authority.

Asserting Article I Review

While the fate of the barred owls is important and the cost to taxpayers should this plan be implemented is obscene, it is just as essential for Congress to use this instance to assert its Article I authority.

Allowing the Biden-era Barred Owl Management Strategy to proceed would be a mean, wasteful, and expensive abdication of Article I authority.

On the other hand, stopping the plan would save taxpayers hundreds of millions of dollars and strengthen the CRA. Congress should save the owls and use this opportunity to make clear that records of decision with significant economic impact are indeed within the CRA’s purview.

Looking Forward

While this CRA is an important step in removing federal spending for wasteful pet projects, the work does not stop here. The Congressional Review Act must continue to be used as an essential tool by the Legislative Branch to prevent administrative overreach. This includes overly expansive interpretations of the law by bureaucrats.

It is particularly critical that Congress employs the CRA to review regulatory actions beyond the narrow definition of rulemakings. The intent of the law is clear – Congressional authority to review administrative regulatory action includes items beyond the scope of formal rules and includes regulatory actions, guidance, records of decision, and other subsidiary regulatory items.