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## Updates on ESA Critical Habitat Implementation and A Harder Look at Agency Scientific Analyses Under NEPA

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In two recent articles, Holland & Hart attorneys examine ongoing issues in the federal agencies' implementation of the Endangered Species Act's critical habitat provisions, and in the evolving standards of judicial review of agency scientific analyses and decisions under the National Environmental Policy Act.

In an article appearing in the current issues *Trends*, the newsletter of the ABA's Section of Environment, Energy, and Resources, Holland & Hart attorneys Murray Feldman and Bailey Schreiber address the February 2016 rules from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service revising implementation of the ESA's critical habitat provisions. They note that under the current Administration, the frequency with which the Services are designating critical habitat has declined substantially, and there are pending key challenges to the new rules and the application of the Act's critical habitat provisions.

In a paper presented at the recent Rocky Mountain Mineral Law Foundation Special Institute on NEPA, Holland & Hart attorneys Murray Feldman and Kristin Nichols continued their ongoing consideration of the shifting patterns in judicial review of federal agencies' scientific assessments of environmental effects under NEPA. They undertook an empirical review of over 70 federal court cases decided in the last seven years. That review identified an ongoing trend in application of what the authors term the "harder look" standard of NEPA review, where courts increasingly look past the agency's science-based conclusions and probe more deeply into the data, models, methodologies, and assumptions underlying the agency's scientific assessments. Their paper concludes that as these NEPA review standards evolve—and federal agency reliance on more complex and technical scientific methodologies and information continues to grow—federal agencies, NEPA practitioners, and stakeholders must recognize and adapt to these court-established standards.

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