

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 02, 2022
Status: Posted
Posted: October 03, 2022
Tracking No. 18s-43z5-45s0
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1910

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

I recommend we not permit any taking of eagles or other wildlife. It should be obvious to anyone that we have over developed the planet and it is changing the climate and having other bad affects.

The best thing we can do is to make all wildlife endangered and stop developers and realtors right now. WE need to contract, retreat, and employ no growth tools immediately and do everything we can to create more wilderness and marine sanctuaries.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 04, 2022
Status: Posted
Posted: October 06, 2022
Tracking No. 18u-pjnh-9pgg
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1911

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

Email: juliahorchos@gmail.com

General Comment

Eagles are migratory birds of prey vital to the North America ecosystem. The U.S. Fish and Wildlife Service is the federal agency tasked with the responsibility of managing bald eagles and golden eagles under the Bald and Golden Eagle Protection Act. This act prohibits the take of bald eagles and golden eagles except under specific federal regulations. Under the ESA, take is defined as to harass, harm, urse, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. The Secretary of the Interior can issue regulations to permit the “taking” of eagles for various purposes, provided this is compatible with the preservation of eagles. I struggle to understand why permits would be granted to “take” eagles and this action would be compatible with the preservation of eagles.

When the bald eagle was delisted from the List of Endangered and Threatened Wildlife. The U.S. Fish and Wildlife Service created two new permits regarding incidental takes, which is an unintentional but not unexpected taking. Preservation standard is defined as consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units relative to 2009 Eagle Act population levels. Currently, bald eagle populations are increasing at a healthy percentage per year; there are 336,000 with a national take limit of 19,623 bald eagles. Golden eagle population size is estimated at 38,000 with a national tke limit at 0 unless offset with comparative migration. Take permitting will be expedited through this proposed rule change.

The U.S. FWS states it did not fulfill its goals with the implementation of 2016 Eagle Rule because bald eagle populations have continued to grow. This means that bald eagles are now interacting more with humans and infrastructure which results in a growing demand for permits authorizing disturbance takes of bald eagles. I do not agree that current permitting places an administrative burden on the public and the service. It is this agency’s responsibility to evaluate permit applications in order to preserve eagles. I am concerned that general permits as an alternative approach will simplify and expedite permitting to a level that will cause harm to the eagle population.

Permitting the taking of eagles, especially when considering the goal of managing the population to be compatible with eagle preservation is not logical. However, I agree population control is important to consider given that eagle populations are stable and increasing. Growing infrastructure and the renewable wind industry

results in increasing contact with eagle populations. I find it fair that every permit must be extensively reviewed. We should not be expediting and simplifying the permitting process for taking eagles. Applications and reviews are necessary in the stop and think provision of NEPA. The burden of reviewing and applying for the right to take an eagle should be placed on those wishing to develop and regulate.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: September 30, 2022
Status: Posted
Posted: October 06, 2022
Tracking No. 180-s5dk-9dz7
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1912

Comment from Morris, Jack

Submitter Information

Name: Jack Morris

Address:

Huntington Beach, CA,

Email: jacktmorris8@yahoo.com

General Comment

I've followed the rules that wish to be approved to further conserve and protect the eagles of the United States and support it completely. Any increase in conservation efforts from the USFWS relating to bald eagles, or eagles in general, is sure to be a good thing, as the bald eagle is the national bird of course. To set a general permit on those in control of nearby wind turbines or any other man-made creation that may disturb residing eagles, or those that were recently brought into the world, is very important. Though one thing I'm curious about is why, in your summary, did you propose to "remove the current third-party monitoring requirement from eagle incidental take permits"? Are they doing a bad job as of current? I'd love to get any input in return, thank you!

- An environmentalist

PUBLIC SUBMISSION

As of: November 28, 2022
Received: September 30, 2022
Status: Posted
Posted: October 06, 2022
Tracking No. 180-vbha-qgz2
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1913

Comment from publiee, jean

Submitter Information

Name: jean publiee

Address:

flemington, NJ, 08822

Email: jeanpublic1@gmail.com

Phone: 800-000-0000

General Comment

permit process does not need to be simplified.your management is to kill them, disgusting to do that. this agency kills far far too easily with no concern for the species or the individual animal. animals deserve respect sand protection. stop working only for human wants and desires to kill and murder.this mgt of eagle lives needs to be taken from fws, which is a hunting killing agency solelyt and exclusivelyboth eagle species deseerve full protection. the public comment should be part of each permit to kill and be able to speak on it and plead for tge eagles life.we cannot trust science anymore - anybody ever seen the science of dr. fauci - shows how corrupt feds have ecome imo. science these days is about money. can you make money from killing eagles. yes you can so killing them is far too easily for these feds.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 09, 2022
Status: Posted
Posted: October 11, 2022
Tracking No. 192-5g39-pi3e
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1914

Comment from Harrison, Dylan

Submitter Information

Name: Dylan Harrison

Address:

New Brunswick, NJ, 08901

Email: dylanmharrison36@gmail.com

Phone: (908)-500-5358

General Comment

October 09, 2022

Jerome Ford

Assistant Director

U.S. Fish and Wildlife Service

5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803

Re:[Docket Number FWS-HQ-MB-2020-0023, Document Number 2022-21025]

Dear Jerome Ford,

Thank you for the opportunity to comment on the Permits for Incidental Take of Eagles and Eagle Nests. As an avid outdoorsman and student, studying environmental policy, I would like to address my thoughts on the newly proposed rule regarding permits for the incidental take of eagles and eagle nests.

My concern for this proposal is that by reducing administrative costs and increasing efficiency, the amendments made may open the door to information not being fully accounted for, ultimately having the risk of harming the eagle population. The proposal aims to provide relief of obtaining said incidental permits by the consolidation of specific requirements for similar projects, through a general permit (59598). Although there is the emphasis on permit issuing efficiency from this proposal, my question is how can you ensure that with this consolidation, there are not any externalities that go unaccounted for?

From the 2016 Eagle Rule, it was sought to have a third party conduct monitoring activities associated with long-

term permits for incidental eagle takings. With the new proposal, it removes this and rather relies on the requirement in 50 CFR 13.12(a)(5), where the permittee must certify that the information submitted is to be accurate and to the best of their knowledge, or they will be charged (59601). A question that comes up is, given this removal of a third party monitoring organization, relying on the permittee to give the monitoring information, how would you tell if this information is in fact accurate? There is no monitoring organization, just the permittee being tasked with monitoring.

Although aimed to reduce administrative costs, there raises the concern that permittees may make the mistakes in producing their information. With the new proposal, it highlights that the regulatory requirement made in the 2016 Eagle Rule, of permit reviews (administrative check-ins), will be removed (59601). This is due to the regulated community having complaints that this gives uncertainty in project planning and funding. Without permit check-ins, and having the permittee monitor their own information, with zero third party organizations required for monitoring, you can see that there is uncertainty in the quality of information submitted. The preventive measure added in this new proposal is that the permittee is subject to charges, but how will the administration know of underreporting or falsifying information if there is no third party organization, and the removal of permit reviews every couple of years? Although the removal may increase more applicants for the permits, the quality and certainty of information may be tarnished, having eagle populations at risk. I ask you to take into consideration how to certify and monitor these permits accurately, given the removal of mandated permit reviews and third party monitoring organizations, as well as the consolidation of similar projects.

I appreciate the opportunity to comment on the permits for incidental take of eagles and eagle nests. Thank you for your time and consideration. Please contact me with any questions you having regarding my recommendation.

Sincerely,

Dylan Harrison
Rutgers University, B.S. expected 2024

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 10, 2022
Status: Posted
Posted: October 11, 2022
Tracking No. 192-uym5-pazy
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1915

Comment from Topchev, Brianna

Submitter Information

Name: Brianna Topchev

Address:

Manahawkin, NJ, 08050

Phone: 609-312-8260

General Comment

See attached file(s)

Attachments

Comment Letter Brianna Topchev (1)

October 10, 2022

Madonna L. Baucum
Information Collection Clearance Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike, MS: PRB (JAO/3W)]
Falls Church, VA 22041-3803

RE: Docket No. FWS-HQ-MB-2020-0023.

Permits for Incidental Take of Eagles and Eagle Nests

Dear Ms. Baucum,

Thank you for this opportunity to comment on the U.S. Fish and Wildlife Service's September 30th, 2022 proposed rule Permits for Incidental Take of Eagles and Eagle Nests. As a Senior at Rutgers University studying Environmental Policy, Institutions and Behaviors, I recognize the importance of such regulations. Especially those that aim to efficiently protect sensitive wildlife populations such as Bald and Golden Eagles, when interactions with human development and infrastructure are inevitable. After reviewing the proposed rule, I believe the transition to a general permitting process, for the incidental take of eagles and eagle nests on certain projects will increase compliance with permit regulations by making the program more efficient to administer, as the Service intends. However, I would like to make the following suggestion, regarding the monitoring of eagle take by general eagle incidental take permittees and removal of the third-party monitoring requirement.

The docket states that the Service proposes to remove the requirement that independent third parties must conduct monitoring associated with long-term permits for incidental take of eagles. Instead, the Service would rely on the requirement in 50 CFR 13.12(a)(5) that the permittee must certify that the information submitted is complete and accurate to the best of their knowledge and belief subject to criminal penalty. I am concerned that this internal monitoring will lead to inaccurate reporting from permittees. The Service is requiring permittees to train their own employees to recognize and report eagle take as part of their regular duties but does not outline any training standards for these employees, nor any perquisite qualifications from these employees that constitutes them as qualified to conduct such reporting. The Service explains that they believe the reference to this criminal provision will ensure that permittees provide the Service with accurate monitoring information (87 FR 59598 September 30, 2022). Yet, I believe it is a fair assumption that some permittees may view the potential risk of being found misreporting eagle take to not be that great, and in their own best interest to please supervisors and to save time, money, and resources, inaccurately report take.

I suggest the Service reconsider removing this requirement from the proposed rule. If the Service, however, finds the requirement to be impractical for an efficient general application program I suggest the Service implement certain precautions to prevent inaccurate reporting. These include a.) Requiring employees selected to monitor take be qualified by means of a relevant degree, or appropriate experience, b.) Implement a standardized training program for these employees created and administered by the Service (cost of this program could be included in application fee), and c.) Ensure that these reports are being monitored frequently enough by the Service that the likelihood of finding false reporting is high.

I appreciate this opportunity to comment on the proposed rule Permits for Incidental Take of Eagles and Eagle Nests. Please contact me with any questions about my recommendation.

Sincerely,

Brianna Topchev
Rutgers University, B.S. expected 2023

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 13, 2022
Status: Posted
Posted: October 17, 2022
Tracking No. 197-s8z3-qc71
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1916

Comment from spinelli, lisa

Submitter Information

Name: lisa spinelli

Address:

phils, PA, 19116

Email: hsbg131@yahoo.com

Phone: 2154102484

General Comment

please continue to protect our eagles last year was hard we lost a lot of them avian flu, fires and floods in their habitats thank you

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 13, 2022
Status: Posted
Posted: October 17, 2022
Tracking No. 197-to5a-afjk
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1917

Comment from Maurer, Kyler

Submitter Information

Name: Kyler Maurer

Address: United States,

Organization: Lake Superior State University

General Comment

See attached file(s)

Attachments

Incidental.Eagle.Maurer

Thank you for giving us, the public, the opportunity to comment on your proposal. The proposal is well written, however, I don't believe there should be any permits given out for the incidental take of eagle nests, bald or golden. I'll start with the incidental taking of nests. Nests are usually 4-6 feet in diameter (1). If, for example, land is being cleared for housing development, wind turbines, etc, a nest that size is hard to miss if the people clearing the land pay any sort of attention to the trees they are clearing. Should a nest be discovered in land being cleared for development, should the developers simply clear the nesting tree without second thought if they have a permit? At this point, the taking is not incidental. I fail to see how the taking of an eagle's nest could be incidental. Should a factory that could be potentially harmful to the eagles health on the property be planned, then the said factory should not be allowed to be built on the same plot of land as the eagles nest. Turbines alone should be the biggest concern with incidental takes of eagles. One company alone was responsible for over 150 bald and golden eagles (2). Would these permits allow that many incidental takes? The bottom line is that these permits encourage developers to be careless should they receive a permit for incidental take. It is my belief that there should be no permits given for the incidental take of eagle nests under any circumstances without proof that the nest is vacated. I understand this could stall development indefinitely, however it is the best way to ensure these species do not become endangered, again for the bald eagle.

Sincerely,
Kyler Maurer
Lake Superior State University

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 28, 2022
Status: Posted
Posted: November 01, 2022
Tracking No. 19s-mbla-37nh
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1918

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

I have attached my comment below. Thank you for your time and consideration.

Attachments

Docket Comment

Thank you for the opportunity to comment on this proposed rule. As a geography major at the University of Wisconsin-Madison, I have learned in many contexts about the various dimensions of the environment, from climate change and environmental hazards to geopolitics and environmental justice issues. In my current environmental policy class, I have learned about the history of environmental policy, the mechanisms of policy making, and the details of specific policies, such as the Endangered Species Act and Migratory Bird Treaty Act. This background has motivated my interest in the dual issue of wind power and bird conservation; I understand both as important environmental issues that must be considered together. I also am an aspiring environmental educator, and currently work at a nature center focused on environmental education programming.

In my comments, therefore, I focus on two aspects of this proposed rule, as it relates to wind projects, that I think could be improved through an environmental education lens: the removal of third-party monitoring and specific permit maximum tenure of 30 years.

To begin, I support a permit system for bald and golden eagle takes. Removing an eagle take permit system for wind energy projects for the purpose of saving all birds would hinder the growth of this important sustainable energy source. I also support the creation of both a general and specific permit program to make the process of receiving a permit simpler and more efficient. **However, I don't support the removal of third party monitoring for the general permit process without the implementation of a training plan.** Section D.2.F of Wind General Permit conditions states "You are required to implement methods for discovering eagles at your project", and "On-site personnel, such as staff, contractors, and volunteers, must be trained how to visually scan for eagle remains", though no document offers guidance on how to train people to scan for eagle remains. The overview of the proposed rule states "we anticipate reference to this criminal provision will ensure that permittees provide the Service with accurate monitoring information without the need to require third-party monitoring", though no document contains data that confirms this hypothesis, and therefore does not provide sufficient justification for removing third party monitoring.

However, I propose an alternative solution to the removal of third party monitoring: the creation of an environmental education program that trains students to complete monitoring and reporting tasks required by this proposed rule. The benefits of this approach are many. Environmental education has proven time and time again to provide a variety of positive outcomes for students and community. In 2018, for example, Stanford researchers analyzed 19 years of peer reviewed articles on the outcomes of environmental education for K-12 students, and grouped 121 unique outcomes into several categories, ranging from emotional and social skills and increased motivation to learn to environmentally friendly behavior and civic interest and engagement (Ardoine et. al. 2018). With these various outcomes in mind, it is clear that environmental education is an important field that can be implemented in conjunction with environmental policy issues.

The National Environmental Education Act of 1990 required the EPA to provide national leadership on environmental education, which included defining 5 objectives of environmental education: 1. **Awareness and sensitivity** to the environment and environmental challenges, 2. **Knowledge and understanding** of the environment and environmental challenges, 3. **Attitudes** of concern for the environment and motivation to improve or maintain environmental quality, 4. **Skills** to identify and help resolve environmental challenges, and 5. **Participation** in activities that lead to the resolution of environmental challenges" (US EPA). The removal of hired third party monitoring provides

the perfect opportunity to implement an environmental education program that carries out these learning objectives put forth by the EPA.

I propose that wind projects work with local schools to bring students every 3 months, as required by section 2.F.3 of Wind General Permit Conditions, to monitor eagle deaths. This program would teach students about the dual issue of wind energy projects and bird deaths, provide hands-on experience collecting data, and present an opportunity to learn about the details of environmental policy making and enforcement, fulfilling many of the EPA's five learning objectives of environmental education.

This program also has the potential to investigate the specific permit maximum tenure for wind projects. The proposed rule intends to retain the maximum 30 year tenure for specific permits for wind projects. A National Audubon Society analysis, however, projects golden eagle breeding ranges to decline more than 40% later this century ("Wildlife"). The 30 year maximum tenure, therefore, is too long to take into account changes in eagle breeding patterns due to climate change. Thus, I propose the environmental education program also monitor long-term patterns in breeding, providing a multi-generational study that once again provides students with experience in data collection and analysis and also teaches about effects of climate change on animal behavior.

To conclude, the proposed permit system for incidental take of bald and golden eagle presents an overall appropriate and well thought-out framework. However, the removal of third party monitoring for general permits and the retention of a 30 year maximum permit tenure for specific permits for wind projects could be improved with an environmental education program, with a mutual benefit to students and community.

Thank you for your time and consideration.

Works Cited:

Ardoin, Nicole M., et al. (2018). "Environmental Education and K-12 Student Outcomes: A Review and Analysis of Research." *The Journal of Environmental Education*, vol. 49, no. 1, Jan. 2018, pp. 1–17. *Taylor and Francis+NEJM*, <https://doi.org/10.1080/00958964.2017.1366155>.

Press, Associated. "Golden Eagles Face Double Threat as US Wind Turbines Add to Climate Crisis Peril." *The Guardian*, 17 Aug. 2022. *The Guardian*, <https://www.theguardian.com/environment/2022/aug/17/golden-eagles-wind-turbines-climate-crisis-wyoming>.

US EPA, OA. *What Is Environmental Education?* 13 Dec. 2012, <https://www.epa.gov/education/what-environmental-education>.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 31, 2022
Status: Posted
Posted: November 01, 2022
Tracking No. 19x-5uof-npah
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1919

Comment from Energy and Wildlife Action Coalition

Submitter Information

Email: bmarcus@nossaman.com

Organization: Energy and Wildlife Action Coalition

General Comment

See attached file(s)

Attachments

Request for Extension of Comment Period - Energy and Wildlife Action Coalition



October 31, 2022

Comments regarding:

Request for Extension of Comment Period Regarding the September 30, 2022 Notice of Proposed Rule for the Permits for Incidental Take of Eagles and Eagle Nests

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Public Comments Processing
Attn: FWS-HQ-MB-2020-0023
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Docket No. FWS-HQ-MB-2020-0023

By this letter, the Energy and Wildlife Action Coalition (“EWAC”)¹ respectfully requests an extension of the comment period provided in connection with the U.S. Fish and Wildlife Service’s (“Service”) notice of a proposed rule to revise regulations authorizing the issuance of permits for eagle incidental take and eagle nest take (“Proposed Rule”).² For the reasons set forth below, EWAC requests the deadline for comments on the Proposed Rule be extended until Friday, January 13, 2023.

The Proposed Rule is the culmination of over a decade of coordination between the Service and utility industry leaders like EWAC. EWAC members share the Service’s position that an amended permit program is needed in order to increase participation, expedite permit-processing, and improve the existing permit framework. A successful permitting program will help further the Biden-Harris Administration’s stated clean energy and grid modernization goals and the implementation of the recently enacted Inflation Reduction Act.³

Given the Proposed Rule’s complexity, including the introduction of general permits for wind energy, power lines, disturbance and nest removal, an extension would allow stakeholders additional time to provide meaningful feedback that is commensurate with the importance of the Proposed Rule. The additional time also would allow stakeholders to adequately address the Service’s request for supplemental information on the impact and applicability of the Proposed Rule. Finally, EWAC believes that extending the comment deadline will result in a final rule that is better supported by available scientific and commercial information.

EWAC appreciates the Service’s consideration of this request and looks forward to providing comments on the Proposed Rule. Please do not hesitate to contact the following EWAC representatives should the Service seek additional clarity on any of the above.

Jennifer A. McIvor, EWAC Policy Chair, jennifer.McIvor@brkenergy.com, 712-352-5434

John M. Anderson, EWAC Executive Director, janderson@energyandwildlife.org, 202-508-5093

Brooke M. Marcus, Nossaman LLP, bmarcus@nossaman.com, 512-813-7941

¹ EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

² 8 Fed. Reg. 59,598 (Sept. 30, 2022).

³ Inflation Reduction Act, H.R. 5376, 117th Cong. (2022). The Inflation Reduction Act expands clean energy tax credits and other incentives to promote future development of wind turbines. *See id.* §§ 13101, 13103.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: October 27, 2022
Status: Posted
Posted: November 02, 2022
Tracking No. 19r-jeob-c161
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1920

Comment from McCoshum, Shaun

Submitter Information

Name: Shaun McCoshum

Address:

Odessa, TX, 79765

Email: Shaun.mccoshum@westwoodps.com

General Comment

The proposed rule is well written and should improve permit access in my opinion. However, the proposed rule fails to ensure surveys are conducted routinely and without bias. There is no credibility in companies self-reporting take, conducting their own surveys, or ensuring their staff are trained.

It is my recommendation that the final rule includes clear language for routine eagle surveys, every two or three years that are similar to the current pre-construction survey coverage in both area and seasonality. Furthermore, these surveys should be required to be conducted by third party, trained biologists.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 03, 2022
Status: Posted
Posted: November 14, 2022
Tracking No. la1-n2b3-3bt
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1921

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

I feel like this revision could make things more complicated in how permits are handed out, not that the process isn't already complicated. If this amendment streamlines processes to obtain the necessary permits faster so that they can help faster, as time is often of the essence, then it would be worth it.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 05, 2022
Status: Posted
Posted: November 14, 2022
Tracking No. la4-j7ox-gf4l
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1922

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

i recommend we do not relax protections for eagles or any other animal when it involves oil and gas, coal ,development, residential or commercial development. Manchin and the GOP are corrupt

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 09, 2022
Status: Posted
Posted: November 14, 2022
Tracking No. laa-fa1f-dric
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1924

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

To begin, I feel reconstruction of boundaries associated with bald and golden eagle populations should be redrawn, considering expert studies and opinions. Concerns over the efficiency of the current permitting process persist, so by constantly updating boundaries with shifting population sizes, Service can better respond to influxes of permits. Not only will this help with allocation of resources, but infrastructure can be built in areas less frequented by eagles.

Wind energy projects maintain imagery associated with advancing towards a less carbon-intensive grid system. However, this does not automatically absolve wind developers from conducting ecological risk assessments. I believe the preservation standard in this proposed rule remains incongruent with the true definition of preservation. In order to fulfil the term preservation, humans should abstain from disrupting natural eagle nests completely. Under this rule, bald and golden eagles may be uprooted and displaced to create cleared lands for developing. Omitting a third-party permitting system incentivizes companies to act on their own accord.

Following this route will allow for survey bias when conducting land assessments. Precise steps dictating proper study metrics should be included to ensure uniform application. Permit appliers are further expected to train their own staff, creating potential discrepancies between submitted reports across industries.

It becomes difficult to assess the scope of eagle deaths because, due to my knowledge and research, the federal government claims this information is sensitive and fails to deliver an exact figure. Rising temperatures attributed with climate change and deforestation, specifically, may reduce golden eagle populations by up to forty percent and according to USGS scientists, the upward growth of wind energy by 2040 could increase eagle-related turbine deaths by almost half (American Eagle Foundation, 2021). Eagles are endangered on all fronts. Additionally, the language choice of “take” is a commonly used word in conjunction with eagle populations and permitting. This represents an impersonal way to view eagles as numbers.

By updating the components listed, I feel a progression towards renewable energy and relieved eagle populations can coexist. Currently, The Migratory Bird Treaty Act prohibits the removal or killing of bird species without a permit, so renewable developers such as NextEra and Duke received scrutiny in court for failing to offset eagle deaths with aforementioned permits (Associated Press, 2022).

References

American Eagle Foundation. (2021). Conventional Wind Energy – A Design Deadly for Birds. Retrieved from American Eagle Foundation: <https://www.eagles.org/take-action/wind-turbine-fatalities/>

Associated Press. (2022, August 20). Wind Energy Boom and Golden Eagles Collide in the US West. VOA News.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 15, 2022
Status: Posted
Posted: November 15, 2022
Tracking No. lai-nyjx-ot1k
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1925

Comment from Leech Lake Band of Ojibwe

Submitter Information

Name: Faron Jackson

Email: irene.folstrom@llojibwe.net

Government Agency Type: Tribal

Government Agency: Leech Lake Band of Ojibwe

General Comment

Please find our comments attached, focusing on diminished protections for eagle nests. We are most concerned about specific permits for nest removal. We also request tribal consultation with your office. Thank you.

Attachments

LLBO Comments on Proposed Eagle Nest Rules 11142022



LEECH LAKE BAND OF OJIBWE

Faron Jackson, Sr., Chairman
Leonard Fineday, Secretary-Treasurer
Kyle Fairbanks, District I Representative
Steve White, District II Representative
LeRoy Staples Fairbanks III, District III Representative

November 14, 2022

The Honorable Shannon Estenoz
Assistant Secretary for Fish, Wildlife and Parks
1849 C Street NW
Washington D.C. 20240

Re: Docket No. FWS-HQ-MB-2020-0023, Permits for Take of Eagle Nests
Submitted via <http://www.regulations.gov>

Dear Assistant Secretary Estenoz:

I write on behalf of the Leech Lake Band of Ojibwe to request consultation and offer comments on the proposed rule for eagle take published by Fish & Wildlife Service on September 30, 2022.

This rulemaking was intended to develop a program of general permits for energy infrastructure. However, we are concerned that the FWS has expanded the scope to include eagle nest removal and disturbance and significantly diminished protections. We are most concerned about specific permits for nest removal. We briefly list protections that have been removed from current regulations, and then analyze those changes in the context of a pending application for nest removal on the border of our Reservation.

Cultural Significance of Local Eagle Population - Under current nest removal regulations at 22.85(d)(6), the FWS must evaluate the “cultural significance of a local eagle population.” This evaluation is important to the Leech Lake Band, as eagles are sacred. Since the 1960’s, we have collaborated with the Chippewa National Forest on restoration of eagle populations. However, under the proposed regulations, the cultural significance of local eagle populations is no longer a factor for consideration.

Finding of No Practicable Alternative – Under current regulations at 22.85(e)(6), the FWS must find “there is no practicable alternative to the nest removal that would protect the interest to be served.” This is the heart of eagle protection because it requires avoidance. It is also a well-established standard used by the Army Corps to protect wetlands. However, in the proposed rule it is replaced with the standard for incidental nest disturbance: “to the maximum degree practicable relative to the magnitude of the activity’s impacts to eagles.” When applied to nest removal, the standard would be interpreted to authorize permissive destruction of nests where the take does not exceed the limit of the applicable Eagle Management Unit (EMU).

Net Benefit to Eagles and Compensatory Mitigation - Under current regulations at 22.85(e)(2)(iii), the FWS must find that “the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.” If the activity does not have a net benefit, the applicant must provide compensatory mitigation related to the level of take and the activity’s purpose, scope, and scale. Under the proposed regulation, the FWS would no longer make a finding of net benefit, the applicant provides that information for themselves.

Compensatory mitigation is required only when the take exceeds the limit of the applicable EMU. In our area, the local FWS office could issue 60 permits for nest removal annually, with no benefits to eagles. This would lead to rapid decline of eagle populations.

Nesting and Foraging Habitat – Under current regulations at 22.85(d)(5), the FWS must evaluate “whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal.” This factor is absent under the proposed regulation. Loss of nesting and foraging habitat results in the loss of not only the nests, but also future reproduction. The proposed rule also lacks any consideration of sensitive, valuable or unique habitat.

Native American Tribal Religious Use – Under current regulations at 22.85(e)(6)(ii), the FWS must find that permits will not preclude higher priorities, including Native American tribal religious use. This protection is removed from the proposed rule.

General Permits for Nest Disturbance – The proposed rule would establish automatic general permits for nest disturbance in eight categories, including construction, timber operations and blasting. The rule has no minimum distance where a general permit is not available. An applicant would receive an automatic permit to start construction and clear surrounding trees immediately adjacent to an eagle nesting tree. Because these permits would be issued automatically upon completion of a form, there would be no opportunity to review avoidance and minimization measures. The applicant can start the disturbance the same day the application is submitted. We are concerned that automatic disturbance permits would be abused and would lead to nest abandonment.

Overall, the FWS intended to initiate a program of general permits for energy infrastructure much like the Army Corps wetlands program. However, enthusiasm for general permits and a major reorganization of the rule has led to a proposal with unintended consequences: diminished protections for eagle nests. The Corps developed its general permit program slowly and carefully over decades. We believe that the FWS should do the same. Our request is that existing protections for eagle nests remain in place, and the Department of Interior engage in tribal consultation on any changes to eagle nest protections.

Huber Frontier Project: Pending Application to Destroy Two Eagle Nests, Wetlands, and Treaty Rights on the Border of the Leech Lake Reservation

The Leech Lake Band of Ojibwe is relying on current regulations at 50 CFR 22.85 to protect two eagle nests of a breeding pair, less than a mile from the Reservation border and within an area where we exercise treaty rights. Their nests, and our treaty rights, are threatened by the Huber Frontier Project, which is seeking permits to destroy their nests, and the surrounding wetlands, forests, and air quality.

The Huber Frontier Project is a plan to construct a 160-acre manufacturing facility for oriented strand board on wetlands adjacent to a critical treaty wild rice bed. The Leech Lake Band is opposed to permitting at this location because the industrial facility would significantly degrade treaty rights to hunt, fish, and gather wild rice. Three federal agencies are considering permits:

- 1) The **Army Corps of Engineers** is considering a 404 permit to fill 30 acres of undeveloped wetlands with a direct hydrological connection to Blackwater Lake on the Mississippi River. Blackwater Lake is on the state list of 350 Most Important Wild Rice Waters in Minnesota.
- 2) The **Fish & Wildlife Service** is considering a permit to cut down and destroy two bald eagle nests. The presence of mating bald eagles demonstrates the importance of Blackwater Lake, which is designated a “Lake of Outstanding Biological Significance” by the MN Department of Natural Resources.
- 3) The **Environmental Protection Agency** will review Huber’s new major source air permit, as well as compliance with water quality standards.

In the past, this federal permitting process would take place in silos, where each federal agency considered separate permits for wetlands or eagles or air quality, and none would consider the combined impact of their decisions on treaty rights. The Biden Administration has promised to do better.

On November 15, 2021, during the White House Tribal Nations Summit, President Biden announced that seventeen federal agencies have formally committed to protecting Tribal treaty rights in the *Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights*. The MOU is intended “to enhance interagency coordination and collaboration to protect such treaty and reserved rights and to fully implement federal government treaty obligations.” As Secretary Deb Haaland said at last year’s Summit, “It is our obligation to honor these treaty rights and incorporate Tribal interests into our decision-making, so that Tribal rights regarding everything from hunting and fishing to health care and education are protected.” For this reason, we believe that evaluation of impacts to tribal lands and treaty resources should be included in any revised regulations. Unfortunately, the proposed rule removed all reference to tribal rights and interests.

The MOU acknowledges that federal protection of treaty rights involves interrelated issues. Although each agency is responsible for the permitting within its jurisdiction, all are charged with exercising their powers to protect treaty rights. In this instance, the FWS is responsible for permitting eagle nest take, and the FWS is also responsible for incursions on treaty rights that result from its decisions.

The Leech Lake Band of Ojibwe retains undiminished hunting, fishing, and gathering treaty rights both on the Reservation and in ceded territory throughout northern Minnesota. See, *Minnesota v. Mille Lacs*, 526 U.S. 172 (1999), also *U.S. v. Brown*, 777 F.3d 1025 (8th Cir. 2015). These usufructuary rights include a right against substantial degradation. In *Washington v. U.S.* 584 U.S. ____ (2018), the United States asserted, and the Court affirmed in a 4-4 per curium decision, a treaty right to hunt and fish includes a right against substantial degradation of habitat. See, Brief of United States at 19. In the context of the Frontier Project, avoiding habitat degradation is part of the federal obligation to the Tribe.

Our citizens at the Leech Lake Band exercise treaty rights every day of the week, for subsistence, for cultural practice, and to make a living. It is our way of life. The Frontier Project presents

grave threats to eagle nests, and the resources our Tribe depends on for our cultural identity, integrity and sustainability.

In the following, we review the Huber application for eagle nest removal under current standards, and how it could be affected by the proposed rule.

Finding of No Practicable Alternative

The Leech Lake Band of Ojibwe has met with Huber representatives on several occasions, and each time they informed us they are considering other sites within and outside of Minnesota as alternatives if permitting takes too long. This is reflected in the Environmental Assessment prepared by Huber, which states:

If the proposed project is not constructed in Cohasset, HEW expects that it would construct a similar facility in another State or Canadian province. HEW identified several promising alternative locations, although none was as attractive as Cohasset. (EAW p10.)

These facts demonstrate that issuance of an eagle nest take permit would be unlawful. The premise of the permitting program under the Eagle Act is that the nest take must be necessary to protect an interest in a particular locality. Huber started with no interest in any locality, only in finding a suitable site for a wood products manufacturing facility. Huber conducted a nationwide search and found this site offered economic advantages over others, in part because undeveloped wetlands are a bargain. Huber cannot define its interest in this site narrowly, because doing so would be contrary to the purpose of the Eagle Act. Any developer could simply point to a protected location and receive a permit to remove eagle nests because the nests stand in the path of development.

Under current nest take regulations, the applicant's interest is evaluated as to "whether there is a practicable alternative to nest removal that will protect the interest to be served." 50 CFR 22.85(d)(3). Before issuing the permit, the FWS must find that "there is no practicable alternative to nest removal that would protect the interest to be served." 50 CFR 22.85(e)(5). "Practicable" is defined as "available and capable of being done after taking into consideration existing technology, logistics, and cost in light of a mitigation measure's beneficial value to eagles and the activity's overall purpose, scope, and scale." 50 CFR 22.3. Here, Huber has not only practicable alternatives, but "several promising alternative locations."

The proposed rule would significantly change this standard. Applicants would provide information on practicable alternatives, but the permit issuance criteria have a qualified standard:

The applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the activity's impacts to eagles. (Proposed rule Section 22.200(d)(2)(4).)

This standard is like the existing criteria for incidental nest disturbance found at 50 CFR 22.80(e)(5). This standard may be appropriate for nest disturbance because some disturbances are slight. But when applied to nest removal, the standard would lead to permissive removal of nests in areas with recovered eagle populations.

We are concerned that this standard would allow the local FWS office to measure the impact of nest loss against the viability of the local eagle population: the take limit of the EMU. In fact, that was the case when they first received Huber's application. We asked the FWS for their views on the permit and received the following answer:

Here are the results of our population analysis of the proposed project as discussed: We estimated the local area population for bald eagles (defined as eagles within 86 miles of the proposed action) was 1,218 eagles. Take from the removal of two nests was estimated to be two eagles, which represents 0.16% of the local area population. Combined with other known permitted and unpermitted eagle take, all known take in the local area population is 5.66 eagles, or 0.46%. Both are below the 5.0% threshold, which triggers additional environmental review.

After the Leech Lake Band engaged in consultation with the FWS and emphasized that the nest removal regulations require a finding of no practicable alternative and differ from the incidental take regulations, the permit application was placed on hold. Our concern is that this type of mathematical analysis, measuring the removal of eagle nests against the EMU take limit, would become the norm under a standard where nest removal is "relative to the magnitude of the activity's impacts to eagles."

In our area, the FWS could issue 60 permits to destroy eagle nests every breeding season without triggering the threshold. This would be immoral.

The Eagle Act provides authority for permits only when "necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality." 16 U.S.C. 668a. Necessity is given teeth by the "no practicable alternatives" standard. Without this standard, the regulations lose focus on necessity, and would result in nest removals authorized by the EMU take limit. We believe this is counter to the purposes of the Eagle Act.

Net Benefit to Eagles and Compensatory Mitigation

The Leech Lake Band learned of Huber's intent to destroy eagle nests when reviewing the Environmental Assessment Worksheet prepared for Huber and submitted to City of Cohasset. This document includes a statement:

The US Fish & Wildlife Service has been contacted about the permit for removal of the bald eagle nests. They indicated that mitigation will be necessary to help offset loss of the nests. Because eagles and nest sites are so abundant in Itasca County, it will not be necessary to compensate by creating an artificial nest. Instead, they said they would accept mitigation in the form of payment to an eagle conservation organization. Details of the mitigation will be resolved during application and approval of the appropriate permit. Nest removal should occur during the season when eagles are not actively nesting (September – December).

See, Environmental Assessment Worksheet, September 17, 2021, City of Cohasset website.

The Leech Lake Band engaged in consultation with the local FWS office on this matter, with a concern that the advice represented in this statement is inaccurate. After the FWS considers avoidance, 50 CFR 22.85 provides authority for permits when "the activity necessitating

the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.” Huber’s proposed mitigation was to make a \$2000 donation to the University of Minnesota’s Raptor Center. This is a trivial sum that would not rehabilitate one eagle, and much less as measured against the destruction of two eagle nests and surrounding nesting habitat.

In addition, any nest removal under 50 CFR 22.85(a)(1)(iv) must include compensatory mitigation where the permitted activity itself does not provide a net benefit to eagles. This is stated in 22.85(b)(8)(iii) and made clear in the preamble to the revised 2016 regulations. “Where the activity itself does not benefit eagles, the net benefit must be through compensatory mitigation.” 81 Fed. Reg. 91508. Compensatory mitigation is measured against the project’s overall purpose, scope, and scale, and whether the mitigation is fairly related to the level of take.

The Huber Frontier Project will have an enormous negative impact on eagles in our region. Not only would Huber destroy two eagle nests, but construction would also destroy the surrounding forest, wetlands, and nesting habitat in a 400-acre undeveloped area that is known for breeding eagles. In addition, the timber demand and impacts on habitat, air and water quality will be detrimental to eagle populations throughout the region.

During our consultation with the local FWS, we maintained that Huber’s permit application must be denied because the destruction of nests and surrounding habitat will be an enormous net loss to eagles, and the proposed mitigation comes nowhere close to the requirements for compensatory mitigation. For the Huber project, the net loss to eagles would preclude compensatory mitigation.

How would this argument fare under the proposed rule? Under the proposed regulation, the FWS would no longer make a finding of net benefit. Net benefit remains in the definition of a nest take for other purposes, Section 22.300(b), but the FWS could issue a specific permit for nest take without evaluating or making specific findings about net loss to eagles. It would be much more difficult to challenge such a decision. Instead, it appears to be up to the applicant to provide information on whether there is a net loss to eagle, or whether compensatory mitigation is necessary. Section 22.200(C)(2)(iii) and (iv).

The new provisions for compensatory mitigation are even worse, when applied to nest removal. Compensatory mitigation would be required only when the take exceeds the limit of the applicable EMU, or when the FWS determine that the persistence of the local area population of an eagle species may not be maintained, Section 22.220(a)(1) and (2). In our region, the local FWS office would apply the formula for the EMU take limit and could issue 60 permits for nest removal annually, with no benefits to eagles and no mitigation.

Consider these two major changes in the regulations, taken together. First, the avoidance requirement has been made “relative to the magnitude of the activity’s impacts to eagles,” which would encourage the FWS to issue nest removal permits up to the limit of the EMU.

Second, mitigation is required only when the take exceeds the limit of the applicable EMU. Taken together, these two changes would make it very difficult for the FWS to put avoidance and mitigation principles into practice. It would be even more difficult for Tribal governments to use the regulations to protect the local eagle population. The proposals are contrary to the Eagle

Act's purpose, and undermine the requirement that eagle take must be necessary to protect wildlife, agriculture, or an interest in a particular locality.

Cultural Significance of Local Eagle Population and Section 106 Consultation

50 CFR 22.27(d)(6) states that the FWS, in determining whether to issue a permit, will evaluate additional factors including the "cultural significance of a local eagle population." During our consultation with the local FWS, it was very important that we were able to point to tribal cultural significance as a factor. Most of their questions were about cultural significance. The eagle nests are less than a mile from the reservation border and within ceded territory where the Leech Lake Band retains usufructuary treaty rights. Eagles are sacred beings, and their nests are sacred sites. The Leech Lake Band of Ojibwe strongly opposes the destruction of eagle nests.

The bald eagle is an important cultural icon for the Band and as such we want to be consulted on any activity affecting it on the Reservation and within the 1855 Treaty Area. (See our Oct. 13, 2013 letter to the FWS.) Our language has a unique word for an eagle's nest, migiziwaison, that has the meaning of a protected place. In our area, an eagle's nest carries a deep cultural significance.

The Band also has a high interest in eagles because under the American Indian Religious Freedom Act, we obtain feathers for cultural and spiritual uses. The Band has an agreement with the FWS that was implemented prior to the existence of the National Eagle Feather Repository. The additional privileges and authority enjoyed by the Leech Lake Band recognize the heightened cultural significance of the Bald Eagle to Leech Lake Band members and cultural reliance on regional abundance of eagles. The evaluation of the cultural significance of the local eagle population should be retained in any future regulations.

Further, eagle nests are subject to protections of the National Historic Preservation Act (NHPA) due to the status of eagle nests as traditional cultural properties (36 CFR 800.16(l)(1): Historic property includes properties of traditional religious and cultural importance to an Indian tribe when eligible for inclusion in the National Register of Historic Places. Therefore, for nesting sites subject to the NHPA, the FWS must comply with the NHPA's section 106 consultation process prior to authorizing an undertaking that could affect eagle nesting sites. 36 CFR 800.2(c)(2)(ii) requires consultation with tribes where properties of religious or cultural significance may be affected by a federal undertaking. In the 2016 revised eagle nest take regulations, the FWS committed to observing the NHPA consultation process regarding eagle nests. 81 Fed. Reg. 91542-3.

The requirement of Section 106 consultation with tribal governments should be made explicit in any revised nest removal regulations. The proposed rule requires NHPA certification for general permits in Section 22.210, but this provision is absent for specific permits under Section 22.200. Moreover, the regulations should be specific in stating that eagle nests are traditional cultural properties protected by the NHPA. Most permit applicants will not realize on their own that an eagle's nest is a traditional cultural property.

Nesting and Foraging Habitat, Sensitive Habitat Generally

Under current regulations at 22.85(d)(5), the FWS must evaluate “whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal.” During consultation with the local FWS regarding the Huber project, we emphasized the importance of this provision.

Issuance of a permit must be consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range. Huber is proposing to convert 400 acres of forest and wetlands into an industrial site, where heavy equipment, trucks, rail cars and other machinery will take over the site during both construction and operation of the facility. Eagles will be forced to choose new nest locations away from the facility, if any are available. There are many other eagles in our area, and eagles defend their nesting territory from other pairs. Huber’s proposal is to force permanent abandonment of a known eagle breeding territory, with no other suitable habitat identified.

This evaluation of habitat for displaced eagles is absent from the proposed regulations and should not be. Unless other nesting territory is available, the loss of a nesting site will result in the loss of not only the nests, but also future reproduction of eagles, and is inconsistent with the goal of maintaining stable or increasing breeding populations.

More generally, the proposed rule includes no consideration of sensitive, valuable or unique habitat. A pipeline company could request a permit to destroy a nest in a wildlife refuge, and there is nothing in the proposed rule to weigh against it. This contrasts with the 404 Guidelines for wetlands, which prioritize “avoiding sites having unique habitat” and “avoiding the destruction of remnant natural sites within areas already affected by development.” See, 230.75(c) and (f).

General Permits for Nest Disturbance

Although Huber has not applied for a nest disturbance permit, we address the issue because the proposed rule for general permits for disturbance are vulnerable to abuse by developers.

The proposed rule would establish automatic general permits for nest disturbance in eight categories, including construction, timber operations and blasting. The rule has no minimum distance where a general permit is not available. An applicant would receive an automatic permit to start construction and clear surrounding trees immediately adjacent to an eagle nesting tree. Because these permits are issued automatically upon completion of a form, there would be no opportunity to review avoidance and minimization measures. The applicant can start the disturbance the same day the application is submitted. This is a sharp departure from the practices that led to eagle recovery, which began in the early 1960's in the Chippewa National Forest. Buffer zones and seasonal limits on human activity near eagle nests were integral to the recovery efforts. See, <https://www.dnr.state.mn.us/birds/eagles/index.html>

The proposed rule provides a rationale for general permits for nest disturbance:

A recent analysis of monitoring reports submitted under nest-disturbance permits reveals that most bald eagles with breeding territories permitted for disturbance do not, in fact,

end up being disturbed by permitted activities when avoidance and minimization measures are followed. Rather, the success rates of populations subject to a high prevalence of disturbance permits do not appear to differ significantly from bald eagle breeding populations subject to few or no disturbance permits."

Our concern with this rationale is that rural eagles behave differently from eagles in more populated areas. Huber's nest removal permit application contains the following statement:

During wetland delineation field work in April 2021, no eagle activity was observed in Nest 1 and Nest 2 was occupied. Nest 2 was discovered by Braun Intertec personnel who inadvertently disturbed the occupying eagle while exiting the Site. Upon close human presence to Nest 2, the occupying eagle flew out of the nest and called out, visibly agitated while circling the general area of the nest. The eagle returned to Nest 2 once Braun Intertec personnel were approximately a few hundred feet away from the nest location. Additional eagles were also observed flying in the general vicinity of the site.

The eagle nesting at the remote Huber site was easily disturbed by a single person walking near the nest. In more populated areas, eagles have become acclimated and are not easily disturbed. It is faulty reasoning to assume that the behavior of eagle populations subject to a high prevalence of disturbance permits will be the same as eagle populations subject to few or no disturbance permits.

The proposed rule would also allow applicants to narrowly define the goal for disturbance, without review. This is a significant shift from how the disturbance regulations were conceived in 2009. When that rule was published, the FWS stated:

We agree with the commenter that the goal for which the take is necessary must not be defined too narrowly by the applicant. For example, if a municipality is installing a bike trail with the goal to create a trail with an unbroken view of the river, it may be more difficult to avoid disturbing eagles along the river, than were the goal less narrowly defined—for example, to create a bike path that loosely parallels the river. Where possible, interests should be defined broadly enough to allow plans to be reasonably modified if necessary to protect bald eagles or golden eagles.

74 Fed. Reg. 46852. Under the proposed regulation, the municipality in this example would receive an automatic permit to build the bike path immediately adjacent to an eagle nest, without any review to encourage reasonable modifications.

We are concerned that automatic general permits for construction would be abused by developers. Under the proposed rule, Huber could apply for and receive an automatic general permit to start construction immediately adjacent to the eagle nests that are currently on the property. Huber is proposing a massive construction project, clearing 160 acres of trees, filling wetlands, 53 acres of new buildings and impervious surfaces, with hundreds of heavy trucks, bulldozers, and construction personnel. The Blackwater eagle was easily disturbed by one person walking nearby. If Huber started construction, the eagle would soon abandon, the nest would no longer be occupied, and Huber would achieve its goal without the need for a specific nest removal permit.

We believe the nest disturbance rules should be subject to significant reconsideration. The FWS should not issue automatic general permits to disturb nests with no minimum distance. This is particularly true in rural areas where eagles are easily disturbed. Even in more populated areas, there should be a process for addressing reasonable modifications to avoid unnecessary disturbance.

Long Term Threats to Eagles

The proposed rule is based on trend data that indicates the bald eagle population is doing well and growing. Although this may be true in some areas, over longer terms eagle populations are not secure.

- Eagles face increased loss of nesting and foraging habit due to human development. The Huber Frontier Project is an example of the “super-sized” development projects that are becoming the norm. The increasing human population that is moving into this area and developing more remote lands, particularly around lakes, is also a significant concern.
- When large blocks of forest are converted to monotypic aspen and repeatedly harvested and regenerated, their value to wildlife diminishes with each cycle. Each time an aspen stand is harvested it becomes simpler and loses diversity of cover and herbaceous plants. Long term forestry trends will result in continued declines for all forms of wildlife.
- Increasing vehicle traffic is the largest direct threat to eagles. In 2018, the Leech Lake Band compiled reports from 147 eagles found dead or injured on or near the Reservation. The highest source of mortality was collisions with vehicles at 45%. The typical scenario is that an eagle will scavenge on roadkill and get hit when startled by a vehicle. The Huber Project is an example of increasing vehicle traffic, adding 184 log delivery trucks per day traveling an average of 100 miles per trip.
- Non-native species such as the zebra mussel are causing fish to change their behavior and stay deeper and forage more at night thus making them less available to eagles. Additionally, the overall biomass of fish is also expected to decline due to zebra mussels.
- Chronic wasting disease in deer is likely to have a similar effect on their major terrestrial food supply.
- Death due to contaminants such as rodenticides and lead. (About 30% of the injured eagles from this area have lead poisoning). This is the result of the FWS and States’ inability to regulate lead ammunition despite a substantial amount of science. Rodenticides are having increasing impacts on eagles who prey on poisoned rodents.

Conclusion: FWS has proposed complex regulations for a broad range of activities that impact eagles. We are concerned that the drafters moved too quickly on the concept of general permits and grouped together eagle nest protections with the rules for incidental take by energy infrastructure. In the process, important protections for nests and tribal concerns were abandoned. Given the problems evident in the proposed rule, we do not believe it should move forward as currently organized. Our tribal resolution is attached. We request consultation with your office. Thank you, and for any follow up please contact Irene Folstrom, Government Relations Manager, at (218) 308-3299, irene.folstrom@llojibwe.net.



LEECH LAKE RESERVATION BUSINESS COMMITTEE

RESOLUTION NO. 2023-42

OPPOSING REGULATIONS THAT DIMINISH PROTECTION OF EAGLE NESTS AND DISREGARD TRIBAL CULTURAL SIGNIFICANCE, TREATY RIGHTS

WHEREAS, The Leech Lake Band of Ojibwe ("Band") is a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and

WHEREAS, Pursuant to its inherent sovereign authority and its By-Laws, the Band's Reservation Business Committee ("RBC"), made up of duly elected representatives, is the governing body of the Band, having all the legislative powers and responsibilities of the tribal government; and

WHEREAS, The RBC is charged with the responsibility of protecting and advocating for the health and welfare of Leech Lake Band members within the exterior boundaries of the Leech Lake Indian Reservation; and

WHEREAS, Eagles are sacred beings, and their nests are sacred sites. The Leech Lake Band of Ojibwe strongly opposes the destruction and disturbance of sacred eagle nests, and since the 1960's has collaborated with the Chippewa National Forest and the Fish & Wildlife Service on restoration of eagle populations; and

WHEREAS, On September 30, 2022, the Fish & Wildlife Service ("FWS") published a proposed rule, 87 Fed. Reg. 59598 (proposed Sept. 30, 2022) (hereinafter "Proposed Eagle Rule"), to revise regulations under the Bald and Golden Eagle Protection Act to establish general permits for incidental take by powerlines and wind energy, as well as revised regulations to destroy or disturb eagle nests; and

WHEREAS, The Leech Lake Reservation ("Reservation") shares geography with the Chippewa National Forest, hosting the largest breeding population of Bald Eagles in the contiguous 48 United States, with over 150 breeding pairs, according to the United States Forest Service; and

WHEREAS, The Band relies on current nest take regulations to protect two eagle nests of a breeding pair, located at Blackwater Lake, less than one mile from the Reservation border and within an area where the Band exercises treaty rights. The nests, and the Band's treaty rights, are threatened by the Huber Frontier Project, which is

OPPOSING REGULATIONS THAT DIMINISH PROTECTIONS OF EAGLE NESTS

RESOLUTION NO. 2023-42

seeking permits to destroy nests, the surrounding wetlands, forests, and air quality; and

WHEREAS, The Proposed Eagle Rule would remove evaluation of the “cultural significance of the local eagle population” that is required under current regulations found at 50 CFR 22.85; and

WHEREAS, The Proposed Eagle Rule would remove the required finding of “no practicable alternative to nest removal that would protect the interest to be served,” that is required under current regulations; and

WHEREAS, The Proposed Eagle Rule would remove evaluation of “whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal,” that is required under current regulations; and

WHEREAS, The Proposed Eagle Rule would remove the required finding that “the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles,” that is required under current regulations; and

WHEREAS, For these reasons the Band finds the Proposed Eagle Rule would diminish protections for eagle nests and ignore the cultural significance of eagle populations to tribal communities, violating the requirement that the Secretary of the Interior find specific taking of eagles or eagle nests is compatible with the preservation of bald or golden eagles; and

WHEREAS, In 2021, seventeen federal agencies committed to protecting Tribal treaty rights in the *Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights*. The MOU is intended to “fully implement federal government treaty obligations”; and

WHEREAS, United States Department of Interior Secretary Haaland said, “It is our obligation to honor these treaty rights and incorporate Tribal interests into our decision-making, so that Tribal rights regarding everything from hunting and fishing to health care and education are protected”; and

WHEREAS, The Proposed Eagle Rule does not consider tribal lands or treaty resources, and should be amended to require evaluation of impacts to tribal lands and treaty resources consistent with the United States’ trust obligation.

NOW THEREFORE BE IT RESOLVED that Leech Lake RBC, at a duly called meeting with a quorum present, opposes the Fish & Wildlife Service’s Proposed Eagle Rule, 87 Fed. Reg. 59598 (proposed Sept. 30, 2022), and calls upon the Biden Administration to address these concerns through tribal consultation before any final regulations are published.

BE IT FURTHER RESOLVED that the RBC directs staff to collaborate on developing comments on the Proposed Eagle Rule that identify the Band’s concerns regarding

OPPOSING REGULATIONS THAT DIMINISH PROTECTIONS OF EAGLE NESTS

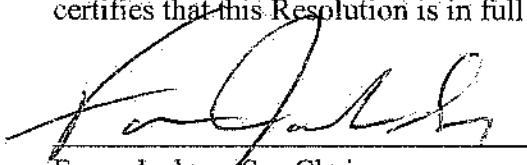
RESOLUTION NO. 2023-42

the creation of a general permit program and the removal of important evaluations related to cultural significance, practicable alternatives, suitable habitat for displaced eagles, and net benefit for eagles.

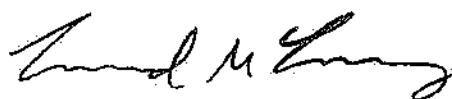
BE IT FINALLY RESOLVED that this Resolution is effective immediately.

CERTIFICATION

WE DO HEREBY CERTIFY that the foregoing Resolution was duly presented and acted on by a vote of 4 for, 0 against and 0 silent at a Special Meeting of the Leech Lake Reservation Business Committee, a quorum being present, held on October 20, 2022 at Cass Lake, Minnesota. Accordingly, this Resolution is duly adopted by the Reservation Business Committee for the Leech Lake Band of Ojibwe, and the Reservation Business Committee further certifies that this Resolution is in full force and has not been amended or rescinded in any way.



Faron Jackson Sr., Chairman
Leech Lake Band of Ojibwe



Leonard Fineday, Secretary/Treasurer
Leech Lake Band of Ojibwe

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 16, 2022
Status: Posted
Posted: November 17, 2022
Tracking No. lak-apu2-ycf8
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1926

Comment from American Clean Power Assoc.

Submitter Information

Name: Stu Webster

Email: swebster@cleanpower.org

Organization: American Clean Power Assoc.

General Comment

American Clean Power Association submits the attached request for extension of the public comment period currently due to close on 29 November 2022.

Attachments

ACP_EagleRule_ExtensionRequest-16Nov22



Final Federal Register notice here: <http://federalregister.gov/d/2022-21025>
Regulations.gov docket here: <https://www.regulations.gov/docket/FWS-HQ-MB-2020-0023>

November 16, 2022

Mr. Jerome Ford
Assistant Director, Migratory Birds Program
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Request for Comment Period Extension Regarding the September 30, 2022 Notice of Proposed Permit Rule for Incidental Take of Eagles and Eagle Nests – Docket No. FWS-HQ-MB-2020-0023

Dear Mr. Ford:

The American Clean Power Association¹ (ACP) appreciates the opportunity to comment on the draft rule² to provide permits under the Bald and Golden Eagle Protection Act (BGEPA or Eagle Act) for incidental take of eagles and eagle nests and the underlying environmental assessment (EA).³ Due to the importance of the Draft Rule and the significance of the proposal, ACP hereby requests an extension of the public comment period until Friday, January 13, 2023.

The Draft Rule represents a substantive and material change to the BGEPA permitting regime that all stakeholders agree needs revision. To illustrate this importance of such revision, representatives from the wind energy industry and environmental organizations partnered for over a year to develop and propose a general permit framework that remedies the one-size fits all approach to eagle permitting, meets BGEPA's Preservation Standard, and creates conservation benefit to eagle populations.⁴ As the Draft Rule and EA clearly articulate, a successfully revised permitting program is one that increases industry participation, creates certainty for industry and eagle conservation interests, and allows a multi-tiered compliance approach for BGEPA that is more reflective of on-the-ground realities of eagle and industry compatibility. ACP members are actively engaged in review of the Draft Rule, but it is evident that the 60-day comment period is insufficient to provide

¹ ACP is the national trade association representing the renewable energy industry in the United States, bringing together hundreds of member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources in the United States. By uniting the power of wind (both land-based and offshore), solar, storage, and transmission companies and their allied industries, we are enabling the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. The American Wind Energy Association (AWEA) merged into ACP on January 1, 2021. Additional information is available at <http://www.cleanpower.org>

² 87 Fed. Reg. 59,598, September 30, 2022, available at: <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21025.pdf> ("Draft Rule")

³ Available at: <https://www.regulations.gov/document/FWS-HQ-MB-2020-0023-1908>

⁴ ACP-Defenders of Wildlife-National Audubon Society-Natural Resources Defense Council October 29, 2021 joint comments available in the docket at: https://downloads.regulations.gov/FWS-HQ-MB-2020-0023-1879/attachment_1.pdf



the U.S. Fish and Wildlife Service (Service) with thoughtful feedback and suggestions necessary to inform the Service how the proposed approach should be refined to achieve a successful outcome that further enables the Biden-Harris Administration's clean energy and grid modernization goals.

The importance of getting the BGEPA permitting program correctly remedied with this rulemaking cannot be overstated. The Draft Rule does a remarkable job of developing a set of changes. However, additional time is needed to fully identify and understand the commonalities and differences with the Service's proposal, work with our partners to formulate a workable set of propositions that eliminate or minimize the differences, compile and submit supplemental information providing the justification or rationale for proposed revisions, and in so doing achieve the goals of an efficient and effective permitting program that maximizes the conservation benefit for eagles.

We fully intend for ACP's comments to be constructive and thoughtful, but more time is necessary to do so. ACP and its members appreciate the Service's consideration of this request and close by thanking the Service for the work to date on the Draft Rule and we are available to respond to any questions, comments, or concerns regarding our request.

Sincerely,
Stu S. Webster
Senior Director | Wildlife and Federal Lands
American Clean Power Association

Tom Vinson
VP of Federal Regulatory Affairs

American Clean Power Association
1501 M Street, NW
Washington, DC 20005
Phone: 202.657.7434
Email: swebster@cleanpower.org

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 20, 2022
Status: Posted
Posted: November 21, 2022
Tracking No. lap-xp8z-ix5q
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1927

Comment from Anonymous

Submitter Information

Name: Anonymous Anonymous

General Comment

I have read the proposed changes to the current law. It would appear these changes will make it easier to “take” an eagle’s nest and/or it’s occupants. I firmly oppose any law change at this time. Especially to benefit a poorly understood and unreliable energy source such as wind. A better way for the government to protect eagles would be to facilitate small individual windmills and small solar arrays at each home. These have been shown to be more efficient and less impacting on the environment. Thank you for your attention to this matter.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 19, 2022
Status: Posted
Posted: November 21, 2022
Tracking No. lao-ea6b-1upg
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1928

Comment from Royce, Steven

Submitter Information

Name: Steven Royce

Address:

Appleton, NY, 14008

Email: sroyce9@gmail.com

Phone: 716-341-0760

General Comment

Based on the actions of a wind energy developer in the Galloo Island (NY) case, it is known that developers cannot be trusted to accurately report eagle activity. What penalties are proposed to encourage reporting compliance? "The proposed general permit will require permittees to monitor eagle take. We propose that project proponents must train relevant employees to recognize and report eagle take as part of their regular duties. This monitoring requirement includes visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at and around project infrastructure. Scans must occur a minimum of once every three months corresponding to the highest eagle-use, seasonal periods to the maximum extent practicable. Any dead or injured eagle discovered within the project, regardless of cause, must be promptly reported to the Service (i.e., within 2 weeks). All eagles must be reported, regardless of suspected cause of death, but may include explanatory information if alternate cause of death is suspected. "

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 20, 2022
Status: Posted
Posted: November 21, 2022
Tracking No. lap-o84i-brir
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1929

Comment from Schwendinger, Anna

Submitter Information

Name: Anna Schwendinger

Address:

Madison, WI, 53703

General Comment

The protection of Bald and Golden Eagles across the United States has been an endeavor close to the hearts of all Americans as we strive to protect our national symbol. However, the increased use of new technologies such as growing wind energy infrastructure and increased power line connectivity has created new challenges to protect these birds. In order to create a future for both eagles and increased infrastructure, I support the creation of a general permit program under this proposed rule. However, to further support conservation and communicate the importance of permitting and compensation for eagle takes, it is imperative to consider the ecosystem services and symbology of eagles and how these benefits compare with the cost of implementation of the general permit program.

Recent studies have exemplified that apex predators such as wolves and birds of prey create top-down forcing on the ecosystems they live in. These forces regulate other predators and prey through population dynamics well understood in the field of ecology. The eagles in North America are no different. Both Bald and Golden Eagles create cascading effects within their environments that impact species such as seabirds, fish, and shellfish populations (Harvey C.J. et. al., 2012) and forest grouse (Llyl, M.S. et. al., 2016). Healthy populations of eagles create healthier ecosystems through trophic cascade effects, therefore, there are priceless benefits of improving the incidental take program for these species. However, there is a price for the recreational fishing and hunting industries, where eagles play a role as a natural predator to these species. Supporting eagle populations creates cascading effects that support a natural predation cycle for prey populations, which can cause direct benefits of increased hunting and fishing permits and increased tourism for hunting and fishing seasons. All of these direct benefits create direct profits to local communities and natural resource departments, which act to counter the costs of the incidental take permits of eagles.

Not only do eagles create direct ecological benefits to their environments, but it is also impossible to consider incidental eagle takes without considering the role the Bald Eagle plays as the American symbol. Conservation of the Bald Eagle is not just a preservation of a species, it is the preservation of a symbol of our country that has stood the test of time and has represented American freedom and longevity (Lawrence E.A., 1990). Protecting a species that creates a sense of unity and patriotism at the national level is, in all meanings of the word, priceless.

This same conservation of symbolic species has been showcased across the world and the connecting link is that these species help to establish and maintain associated cultural values (Schirpke, U. et. al., 2018). The protection of the eagle through the Bald and Golden Eagle Protection Act and through this proposed rule would support the cultural values we as Americans have placed on this specific species. The cost of implementation of the general permit program is a tangible one, but continued conservation of our national symbol through this proposed rule is well worth the cost of the program.

To continue and improve efforts to conserve the Bald and Golden Eagles, I support the creation of a general permit program. I believe that the benefits of the ecosystem services through apex predator trophic cascades and symbolic power that eagles provide justifies the cost of the program. Hopefully, though a general permit program, wind energy construction and power line infrastructure can see increased rates of permittance and create lasting population impacts on a species all Americans feel a connection to. There has already been great success in recovery of eagles and that success should not stop in the face of increased wind energy and power line infrastructure.

Harvey C.J., Good T.P., and Pearson S.F.. Top-down influence of resident and overwintering Bald Eagles (*Haliaeetus leucocephalus*) in a model marine ecosystem. *Canadian Journal of Zoology*. 90(7): 903-914 (2012). <https://doi-org.ezproxy.library.wisc.edu/10.1139/z2012-059>

Lawrence EA. Symbol of a nation: the bald eagle in American culture. *J Am Cult* 13:63–69 (1990). https://doi-org.ezproxy.library.wisc.edu/10.1111/j.1542-734X.1990.1301_63.x

Lylly, M.S., Villers, A., Koivisto, E. et al. Guardian or threat: does golden eagle predation risk have cascading effects on forest grouse?. *Oecologia* 182, 487–498 (2016). <https://doi-org.ezproxy.library.wisc.edu/10.1007/s00442-016-3680-8>

Schirpke, U., Meisch, C. & Tappeiner, U. Symbolic species as a cultural ecosystem service in the European Alps: insights and open issues. *Landscape Ecol* 33, 711–730 (2018). <https://doi-org.ezproxy.library.wisc.edu/10.1007/s10980-018-0628-x>

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 19, 2022
Status: Posted
Posted: November 21, 2022
Tracking No. lao-jtsd-xf2u
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1930

Comment from Sy, Thomas

Submitter Information

Name: Thomas Sy

Address:

Lockport, NY,

Email: tom@elockport.com

General Comment

I can only assume these proposed regulations are someone's poor attempt at humor. As a wildlife biology graduate where do I begin. As a resident along the shores of Lake Ontario I have the privilege of seeing a limited family of bald eagles traverse a sizable portion of lakeshore. Whether it is the only recent removal off endangered lists to the fact that bald eagles mate for life once paired both point to avoiding avoidable taking by wind turbines

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 21, 2022
Status: Posted
Posted: November 22, 2022
Tracking No. lar-7yi2-zjhy
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1931

Comment from Atlantic Flyway Council

Submitter Information

Name: Gray Anderson

Email: richard.s.bailey@wv.gov

Government Agency Type: Regional

Government Agency: Atlantic Flyway Council

General Comment

See attached file(s)

Attachments

AFC Recommendation on Eagle Rule Comment Letter final signed 2022.11.21



ATLANTIC FLYWAY COUNCIL

Ontario	Québec	Nunavut	New Brunswick	Newfoundland & Labrador	Nova Scotia	Prince Edward Island
Maine	New Hampshire	Vermont	Massachusetts	Rhode Island	Connecticut	New York
Pennsylvania	New Jersey	Delaware	Maryland	Virginia	West Virginia	North Carolina
South Carolina	Georgia	Florida	Puerto Rico	Virgin Islands		

November 21, 2022

Public Comments Processing

Attention: FWS-HQ-MB-2020-0023
U.S. Fish and Wildlife Service; MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted via regulations.gov

Regarding: Permits for Incidental Take of Eagles and Eagle Nests
Docket No.: FWS-HQ-MB-2020-0023

The Atlantic Flyway Council (Council) is a coalition of 17 states, Puerto Rico, U.S. Virgin Islands, 6 Canadian provinces, and 1 Canadian territory that works with respective federal governments to manage migratory birds and their habitats in eastern North America. Council members, cooperating with various federal agencies and non-governmental partners, deliver many of the conservation programs for migratory birds over a significant portion of the eastern seaboard of North America. The Council shares the concern of the U.S. Fish and Wildlife Service (Service) related to increasing impacts of human activities on eagles, and applauds the effort to proactively address potential sources of incidental take while increasing participation of the regulated community in the incidental take permitting process.

As requested by the Service, the Council provides the following comments, concerns, and recommendations regarding the Draft Rule on permitting incidental take of eagles protected under the Bald and Golden Eagle Protection Act.

Action Alternatives

We have reviewed the three Action Alternatives provided in the Draft Environmental Assessment, and generally agree with the Service that the preferred alternative (Alternative 4) is the one most likely to broadly increase industry participation in the permitting process as well as the adoption of conservation practices likely to minimize take of eagles. Alternative 1 (no action) would continue the status quo of few applications for permits and likely widespread unpermitted take. Alternative 2 (General Permit for wind only, with eligibility based on distance from nests and a flat fee for mitigation) inadequately addresses the need to encourage permit applications for other significant anthropogenic sources of take and would ignore other aspects of eagle behavior that result in elevated risk, *e.g.*, population concentrations during migration or important wintering areas for golden eagles in the East. Alternative 3 (General Permit for wind only with eligibility based on eagle relative abundance and distance from nests) would better

account for risk across the annual cycle, but would not include other activities that are in the preferred alternative that need to be vetted via the permitting process. In the context of our general concurrence with Alternative 4, we provide the following requests, questions, and recommendations.

Engagement with State Wildlife Agencies

We request that the Service coordinate closely with state wildlife agencies during all phases of the permitting process for incidental take of eagles. This coordination is crucial to ensure that state agencies' roles, responsibilities, and regulatory limitations are considered, whether it is regarding both general and specific permitting, development of permitting procedures and monitoring guidance, or assessment of relative risk to eagles from permitted activities. In reviewing the Draft Rule, we noted no references to, or proposals for, coordination with state wildlife agencies.

Coordination and communication with state agencies before General Permit issuance

While the Service and state wildlife agencies have a long history of close coordination regarding human impacts to wildlife, the degree and nature of that engagement has been variable across states. Under the current eagle permitting framework, the Service generally provides opportunities for the receipt and consideration of state concerns, requests, and/or mitigation preferences (*e.g.*, notifying permit applicants of state approval requirements and potential permit stipulations). The preferred alternative in the Draft Rule would create additional complexity across the permitting process, including a new general permitting tier. This added complexity highlights the importance of defining within the Draft Rule the communication procedures between the states and the Service.

We understand that the General Permit concept is intended to increase company participation through a fast application process not subjected to Service case-by-case review. We generally support the concept, but have substantial concerns that, in pursuit of convenience and increased participation, state wildlife agency input won't be solicited and incorporated within the permit language. From our perspective, it is critical that, before publishing a final rule, the Service collaborates with the Flyways to identify a means of state input to the general permitting process. To facilitate this engagement, we request that the Service hold consultation sessions with the Flyways regarding the following:

1. Methodologies to better identify risk (and therefore appropriate permits) that incorporate state wildlife agency expertise and biological data but nonetheless remain compatible with the proposed General Permit structure;
2. How states can provide input regarding standardized conditions of General Permits, especially the assessment of the potential effectiveness of avoidance and minimization requirements.

As proposed, the general permitting framework would allow applicants to easily obtain permits, which would be accompanied by "tried and true" minimization and avoidance measures for

permittees to follow, ostensibly included in their Bird and Bat Conservation Strategies (BBCS) or other similar plans. While these Best Practices would likely be appropriate in most situations, state wildlife agency staff are often more knowledgeable regarding local circumstances that may warrant adjusted measures. Furthermore, many states have developed their own guidelines, which may include important recommendations not in existing Service guidance, such as the Land-based Wind Energy Guidelines.

The Specific Permit process typically includes consultations whereby states are able to provide input before issuance of permits, such as reviews of BBCSs. The General Permit process, as proposed, would not include these consultations, which may be of particular concern for states without Threatened/Endangered or Incidental Take regulations. Most states do not have an incidental take permitting process in their regulations and have historically relied on the Service's permitting process as an opportunity to include state-specific requirements. We request that the Service consider consultations with the Flyways on proactively updating existing Service avoidance and minimization guidance, or support an efficient process whereby state considerations are included when parties apply for a General Permit.

State conflicts with application requirements for a General Permit

As proposed, the application requirements for a General Permit stipulate that golden eagle nests must be at least 2 miles and bald eagle nests must be at least 660 feet away from the activity. Some states, especially those in which one or both eagle species are listed, are prohibited from publicly disclosing the coordinates of eagle nests to third parties, because doing so could increase the risk of disturbance-related take. Under the Draft Rule, a permit applicant whose land or project falls within these buffers could potentially be informed of a nest location. Furthermore, permit applications are public documents and therefore the location of the nest in this example could become publicly known. These circumstances might violate regulations in some states. To ensure that nest locations are not made public, we recommend that applicants not be allowed to include the coordinates of the nests in the permit application, without first coordinating with their state wildlife agency. We recommend that this stipulation be included in the final rule.

Mitigation process and use of mitigation funds received by USFWS

We request that the final rule include thorough details about the compensatory mitigation process. How will suitable mitigation be assessed and how will fees be collected and used? We also request that the Service reconsider omitting a requirement for compensatory mitigation in situations where a permittee's actions result in the disturbance and take of eagle nests. State wildlife agencies should be consulted in the process of determining appropriate mitigation for projects within their jurisdiction, as well as with respect to determining how collected fees will be expended on behalf of eagle conservation. Bald and golden eagles sometimes experience detrimental consequences from consuming lead ammunition fragments in the carcasses of game species. Therefore, discussions should be had with states for the most effective implementation of lead abatement as a compensatory mitigation option.

Service coordination with state agencies regarding non-renewal of a General Permit and potential replacement with a Specific Permit

The final rule needs to explain how the Service will consult with states and other partners regarding decisions to require a permittee's change from a General to a Specific Permit. What will the approach, structure, or framework be for those conversations?

Eligibility for General Permits

Abundance concerns at sub-EMU scale

The Draft Rule calculates take limitations at the level of previously established Eagle Management Units (EMUs). In many instances, one or both eagle species are listed as endangered or threatened within states encompassed by these large-scale management units. How will the Service avoid authorizing take such that it further jeopardizes the status of the eagle species within those states? The Draft Rule indicates that compensatory mitigation resulting from authorized take within EMUs will be correlated with local area population thresholds (LAP). We recommend that the Service provide details concerning the coordination and calculation process between the Service and the states with respect to the distribution of authorized take across individual EMUs, as well as in relation to the science-based quantification of LAP thresholds.

Methodology of abundance threshold calculations

Reliance on eBird data for assessments of eagle abundance may lead to an underestimation or skewed distribution, given that eBird data is dependent on observations by the public. For golden eagles especially, data from eBird is limited in determining relative abundance, occurrence, and distribution. Telemetry studies conducted by Virginia Department of Wildlife Resources and the Eastern Golden Eagle Working Group (EGEWG), as well as research utilizing camera trapping, demonstrate eBird's inadequacy in delineating low and high use areas for eastern golden eagles. For instance, eBird shows the core of their wintering area to be in New York State, but telemetry and camera trapping data show that golden eagles are more apt to utilize the more-southern areas of the Appalachians and that these areas are of greater conservation significance to the species. We suggest incorporating other datasets to compensate, such as habitat assessments through remote sensing, aerial surveys, EGEWG telemetry data, and nest data where available.

The Draft Rule is vague about how often new data will be incorporated into the abundance thresholds, and how updates are proposed via the rulemaking process. The rulemaking process does not appear to be the best method to regularly update abundance thresholds given the length of the process. We recommend the final rule outline a transparent mechanism for updating the thresholds at a realistic interval not to exceed five years (annual updates preferred).

Wind facilities are increasingly prevalent, and turbine technology is rapidly evolving to taller towers with larger blades that increase hazardous volume and therefore collision and mortality risk. How will the Service reassess anticipated-take calculations for both eagle species as turbine technology changes? We recommend the final rule stipulate a time interval for which the Service will reassess established take calculations in relation to advances in turbine technology. We also

request that the Draft Rule explain how the permit type or conditions will be updated to account for a potential increase in collision risk when facilities are repowered.

Calendar of eagle activity (Table 1)

The thresholds identified in Table 1, based on eBird data, are quantified for four seasonal periods (i.e., spring migration, breeding, fall migration, and winter) plus the average of the two migratory periods (#1 and #3). The defined date ranges are too general for eagles using the Atlantic Flyway. The proposed rule inappropriately applies a one-size-fits-all approach to the biological phenology of the two species, irrespective of latitudinal and longitudinal differences. In fact, the “seasons” may be misleading, especially so for bald eagles. Bald eagles can be found incubating eggs in November at the southern end of their range, while being several months away from laying eggs at the northern end of their range. In fact, many Flyway states report breeding season periods drastically different from the April 12-September 6 period listed in the Draft Rule (*e.g.*, NY 1/1 - 9/30; PA 1/15 - 8/1; VA and WV: 12/15 - 7/15; GA: 11/1 - 5/30). The defined “seasons” in Table 1 also inaccurately reflect the life cycle of the golden eagle. Phenological differences between eastern and western populations are not considered. For example, eastern golden eagles start migration long before December 14th.

We support the use of different threshold abundances by season, but recommend the Service reassess Table 1 and incorporate geographical differences for each of the periods. The most straightforward, single split (*e.g.*, northern/southern for bald eagles; eastern/western for golden eagles) would likely result in more accurate abundance thresholds, thus leading to improved siting for general permittees.

Finally, there appears to be a calculation error in the golden eagle abundances. The stated average of periods 1 and 3 (0.145) is less than both period 1 (0.206) and period 3 (0.168). We recommend all values be confirmed prior to the final rule.

Eligibility when wind facility overlaps low and high risk

We support the conservative approach the Service proposes to address situations where a portion of a planned wind facility exceeds the abundance threshold for a Specific Permit, even if only a minority of turbines fail to qualify. However, the Draft Rule provides an exception to this conservative approach for existing facilities, whereby a requirement to obtain a Specific Permit is accompanied by an opportunity to request a General Permit. The Service notes that most such requests could be granted, particularly when a small percentage of turbines exceed the abundance threshold or when a project provides monitoring data to support relatively low eagle abundance. This exception gives us cause for concern.

The Atlantic Flyway includes states in the Appalachian Mountains region that have witnessed rapid wind energy development in topographic contexts (such as the Allegheny Front) that overlap important eagle migration corridors. Because the Service has decided not to include additional important sources of data in assessing risk in its preferred alternative, particularly for golden eagles, and because it appears that the Service decided on a liberal approach for the eBird-based risk model, we urge the Service to require collection of two years of monitoring data

for any facility in the eastern Golden Eagle Management Unit (Mississippi and Atlantic Flyways) seeking a General Permit, as per the above-noted circumstances.

Determination of “low effects”

The Draft Rule states that General Permits will be issued for activities that result in consistent and “low effects” on eagle mortality. The Council requests that the final rule explains how “low effects” will be evaluated and provides assurances that the determination of “low effects” will be re-evaluated within a specified time frame determined via state input, especially in light of technological changes (e.g., increases in wind turbine size and operating speed).

Nest disturbance rules

Under activities eligible for a General Permit, it is unclear if prescribed fire would fall under the “alteration of vegetation” category (i.e., forestry practices). Given the long-term benefit of regular prescribed burns for habitats occupied by eagles and other wildlife, we recommend that this management tool be regulated under General Permits and that the Service should incorporate in the rule language that describes the benefit of prescribed fire as sufficient mitigation.

Management of General Permit Program

Data sharing regarding nest locations

Some of our member agencies report that locations of bald eagle nests within their states shift at an annual rate of as much as seven percent. They note that this trend is likely to accelerate as increasing eagle population numbers lead to a corresponding increase in the selection of sub-optimal habitats and smaller-diameter trees in which to place nests. This trend also means that, in just four to five years without aerial surveys, the existing GIS-based inventory of bald eagle nests will be substantially less accurate. These trends also increase the likelihood that large-scale developments such as wind energy projects will inadvertently take eagle nests more frequently. If an eagle pair builds a nest on a General Permitted wind energy site after turbines have been installed, the Draft Rule indicates that the permit will remain in effect through its previously designated timeframe.

We understand that the potential for switching permit types following the startup of a project could further reduce the likelihood that developers will apply for permits in the first place. Would the Service and the responsible state agency be solely dependent on the permittee to detect and report the new nest? We recommend that the Service include in the rule details concerning how—with assistance from states when possible—bald eagle nest data will continue to be collected and maintained.

Self-monitoring by permittees

We understand that current reporting requirements from third party monitors are costly, and the elimination of that requirement would bring more projects into the permitting system. However, project-scale reporting conducted by permittees should still strive to be accurate and consistent across sites.

The Draft Rule indicates that monitoring of permitted sites once every three months for the purpose of finding eagle carcasses is sufficient. We believe that this will often be inadequate, given the potential for the scavenging of remains of carcasses at some sites, as well as with respect to the rate of decomposition of carcasses. This infrequent monitoring standard would make it difficult for the Service to evaluate permittees' claims that, when "old" eagle remains are found, a cause other than a collision with a wind turbine was responsible for the bird's death. In the absence of an approved third-party monitor, how would the Service evaluate the veracity of a permittee's claim that it was not to blame for an incidental take? Third-party monitors at project sites have often been able to defend permit compliance complaints received from the public.

We recommend dedicated monitoring (*i.e.*, searching for remains is the only duty assigned to the individual during monitoring events) by qualified personnel at wind turbine facilities to occur monthly and that the final rule clearly outlines a survey method to ensure consistency across sites. Given that personnel assigned this duty may have varying degrees of experience, we recommend the Service create a simple online training tool that provides information on survey methods and identification of eagle carcasses at different stages of decomposition. Such a training tool would include: (1) recommendations on transect size; (2) ideal time of day to search for carcasses; and (3) reporting requirements.

Because wind turbine facilities may cause mortality to other wildlife (*e.g.*, bats) and therefore require monitoring to detect carcasses of those species, coupling the trainings and qualifications may increase efficiency. For nest monitoring, we recommend standard monitoring methods and the establishment of minimum qualifications for monitors (including a simple online training) to ensure monitors know how to monitor and report on disturbance effects and nest outcomes.

Monitoring by the Service

The Draft Rule does not include adequate details on how the Service will complete program-wide monitoring and how monitoring at project sites could determine whether permittees are complying with permits. If the Service's fatality-monitoring detections differ greatly from self-reported detections at a site, how will the Service respond?

Recommended details to include for Service program-wide monitoring:

1. Percentage of sites to be monitored
2. Repetition of monitoring efforts per site
3. Methods should be similar to those provided to the permittee for self-monitoring

These details should be included in the final rule for evaluation, as this program-wide feedback will be the main method the Service uses to decide if the program is compatible with the conservation of eagles.

Auditing by the Service

The Service requested feedback on the implementation of the audit program. We have the following recommendations:

1. Because General Permit eligibility criteria are determined by the applicant, we recommend the Service audit all General Permits in the first year of the program to ensure that applicants understand how to apply for the correct permit type. Over a five-year period, the percentage of audited permits would decrease until reaching a minimum of 15-20% annually. Audited permits should be representative of all types of General Permits and Eagle Management Units.
2. Based on results from the first year of audits, we recommend the Service responds adaptively to common issues seen across permit applications. This could be in the form of webinars, FAQs, or other outreach methods to improve understanding of the new permit system.
3. To maximize conservation benefits, we encourage a transparent permitting process (e.g., permits and reports are public and accessible to stakeholders and partners).
4. We request that the Service provide a report of the audit results to the flyways on an annual basis.

Four-eagle rule and adaptive management

We support the inclusion of an eagle take threshold in the General Permit conditions. Although General Permit approval is appropriately based on species-specific relative abundances and nest locations, we disagree with species-specific eagle thresholds. The golden eagle is clearly a greater conservation concern, and we therefore recommend a four-eagle threshold irrespective of species. For example, under the proposed rule, a project that has detected two dead bald eagles and one golden eagle remains compliant, while another permittee with three dead of one species would need to provide the Service with an adaptive management plan. This guidance will be the source of much confusion.

Moreover, the process outlined under the four-eagle threshold needs to be better articulated in the final rule. How will the adaptive management plan (required at three eagle deaths or injuries) be reviewed and approved? If a permittee reaches and exceeds the four-eagle threshold, are there additional requirements for the adaptive management plan to include actions if additional mortalities (or injuries) are detected? We recommend the final rule include language regarding the expected conduct of General Permittees who have exceeded the eagle threshold.

Program evaluation

The proposed rule states that the General Permit program will be evaluated regularly by the Service. It also indicates that the Service will annually compile information regarding issued General Permits and make this information available to interested parties including state agencies. We request that the final rule detail what specifically will be evaluated, how frequently evaluations will be performed, and provide a coordination procedure whereby states and other

parties will be notified and afforded the opportunity to review and comment on these data and on the process.

Data management and sharing

During the first public webinar covering the Draft Rule, the Service was asked if there would be a publicly available list of companies that have obtained permits. The Service noted that the information would be available through the FOIA process, but that there were no firm plans to otherwise share permit information. In keeping with above comments regarding the need for effective coordination between states and the Service during all stages of the permitting process, we request that the Service:

1. Proactively notify state agency points-of-contact regarding issued permits of both tiers, following a mutually agreed upon format and consistent schedule;
2. Establish and maintain an online data portal with permit information that could be queried by state agencies;
3. Establish a mechanism by which state agencies can obtain and review monitoring data from projects with General Permits, including identity and credentials of third-party monitors; and
4. Establish procedures whereby states could submit, *e.g.*, new or updated eagle nest data, to inform permit type, adaptive management, and/or compensatory mitigation.

Powerline Installation Rules

The Draft Rule notes six conditions that must be met for a new or reconstructed project to be eligible for a General Permit, including a recommendation that infrastructure be sited at least 2 miles from golden eagle nests, 660 feet from bald eagle nests, 660 feet from bald eagle roosts, and 1 mile from bald eagle or golden eagle foraging areas. The recommended 1-mile foraging area buffer may be impossible to practicably achieve in many coastal areas within the Flyway, potentially including the entirety of small states such as Delaware or Rhode Island. Would this feasibly translate into *de facto* Specific Permit requirements for these areas? The Rule states that provisions for a Specific Permit would be retained, and that the Service may notify utilities of a need for a Specific Permit. However, the Service does not provide criteria that could be used to determine if a Specific Permit would be required in cases where all six conditions are not fully met. Therefore, we request that the Service provide clarity on this subject, including practical guidance to companies unable to meet one or more of the recommendations.

In-use Nest Definition

The Draft Rule defines in-use nests as those containing at least one viable egg or dependent young. It is difficult to determine in the field whether an egg is viable. Is the determination based on adult activity at the nest, or timing during the breeding season? This needs to be explained. Bald eagles often spend weeks performing maintenance on nests before egg-laying, which can be apparent to trained observers. When nests are clearly being prepped for use, why are they not “in-use nests” (which they were considered to be under previous management guidelines)? Allowing these “under maintenance” (*i.e.*, pre-laying) or “under construction” nests to be taken

could potentially prevent an eagle pair from contributing offspring to a local area population that season.

Recommendations for use of revenue generated by permit fees.

In addition to collisions with wind turbines, other threats to the conservation of bald and golden eagles in the Atlantic Flyway include toxic effects resulting from lead and rodenticide exposure. Some aspects of these threats to the population health of eagles are not thoroughly understood. We recommend that the Service devote a portion of General Permit fees to furthering research into the effects of these hazards to improve the development of compensatory mitigation options.

Regulatory authorization for state wildlife agencies and their partners

In March 2022, we submitted comments to the Service pertaining to a potential MBTA permitting framework that would allow exemptions (regulatory authorization) for state wildlife agency and partner activities, pursuant to State Wildlife Action Plans, that have a net conservation benefit but may nonetheless result in take. In recent consultation with states within the Atlantic Flyway, concerns were raised regarding beneficial activities such as prescribed burning that must occur during certain times of the year, and therefore could result in occasional bald eagle nest disturbance. We request that the Service develop and include a regulatory authorization framework in the final rule that incorporates input (similar to that provided by us in March 2022) from state wildlife agencies that allows for their exemption from the permitting process provided certain conditions are met, such as adherence to established best practices.

We thank the Service for the opportunity to provide these comments and for coordinating with the Flyways. Should you have any questions or require additional information relating to these matters, please contact us.

Sincerely,



Gray Anderson, Chair
Atlantic Flyway Council

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 21, 2022
Status: Posted
Posted: November 22, 2022
Tracking No. lar-3bd7-2jx8
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1932

Comment from LP, H

Submitter Information

Name: H LP

Address: United States,

Email: hasleypitman@gmail.com

General Comment

While this proposed rule seeks to ultimately help preserve the Bald eagle and Golden eagle population, there are a few concerns with the new specific and general permit requirements. By having a general permit requirement for less-stake situations, it will encourage more permits to be submitted for the take of eagles because it allows for more flexibility; however, the thoroughness of these permits are likely to be much less consistent with specific permits, especially since the administrative burden is much lower to review them. As stated in the background information, “We will continue to fine-tune, and consider public input on, eligibility criteria for all general-permit categories...” This acknowledges the hollowness of the general permits and how it could become a problem. On the other hand, I agree this new proposed rule could prevent the takings with no permits at all, which prevents the needed offset to further the eagle population. Since 2016 the growth of the eagle population shows success with the implementation of permits, but this also means more permits are now necessary because more eagles are coming into contact with power lines, construction, etc. I applaud the work to continue helping this amazing creature, I just hope the process does not become lackadaisical now that the numbers have grown. I hope there will be a watchful eye still on general permits being administered.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 21, 2022
Status: Posted
Posted: November 22, 2022
Tracking No. laq-yc0-7nhf
Comments Due: November 29, 2022
Submission Type: Web

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1933

Comment from Save Ontario Shores, Inc.

Submitter Information

Name: Pamela Atwater

Email: pamatw155@gmail.com

Organization: Save Ontario Shores, Inc.

General Comment

See attached file(s)

Attachments

Comments - USFWS proposed rule - Eagle take2

SAVE ONTARIO SHORES, INC.
P.O. Box 382
LYNDONVILLE, NY 14098

November 18, 2022

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803
Attn: FWS-HQ-MB-2020-0023
(Via electronic submission)

Subject: Comments on Proposed Rule - Permits for Incidental Take of Eagles and Eagle Nests

To whom it may concern:

Thank you for the opportunity to submit comments relating to the above-named proposed rule. Our organization is a grassroots citizens' coalition formed in 2015 in opposition to the Lighthouse Wind Project proposed by Apex Clean Energy in the Towns of Yates and Somerset, New York, along the southern shore of Lake Ontario. One of our primary concerns with this project had to do with its potential siting in the midst of a significant and internationally known migratory pathway for raptors and passerines.

Over the course of 8 years, we have become well-versed in the research which has been done regarding impacts as a result of collisions with wind turbine blades. As towers become taller, blades longer, and numbers of turbines increase, there is even more cause for concern. There have been radar studies conducted by the USFWS in our region which indicate the potential for high mortality through the rotor swept area of the blades.

Many bald eagles are observed migrating through our area in the spring and fall. There is also a resident population which routinely fishes in the lake. Local residents have taken part in raptor counts. The point of mentioning these facts is that members of our group are more than casual observers of eagles.

A point of concern with the proposed rule on permits is the limited third-party compliance monitoring required. An independent third-party monitor is essential to make sure the developer is complying with their permit. Our experience with the developer Apex has shown them to be less than forthright. This was publicly demonstrated in their conduct associated with the Galloo Island Wind Project in upstate New York. This project was withdrawn after Apex neglected to divulge the presence of an active eagle's nest within the project area. (Details are included in this NY Times article:
<https://www.nytimes.com/2019/06/25/nyregion/ny-clean-energy-law-wind.html>.)

Another weakness in the new regulations is the lack of substantial post-construction monitoring for eagles. As the United States, and in particular states like New York, begin a rapid, massive buildup of industrial wind projects alongside massive solar projects, the impacts on habitat will be substantive but

the specifics are unknown. The cumulative impacts on wildlife must be monitored on a regular basis. The next five years will be crucial because the buildup will be rapid and environmentally uncoordinated.

We understand that the USFWS is trying to balance a desire to make the regulations realistic for developers so they will participate in the program with the need to protect eagles. However, these regulations, that provide little or no reliable information to assist with the upcoming buildup of industrial wind turbines, must be strengthened.

Sincerely:

Pamela Atwater

Pamela Atwater, President
Save Ontario Shores, Inc.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 22, 2022
Status: Posted
Posted: November 22, 2022
Tracking No. las-pzmy-vksp
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1934

Comment from Czebiniak, Kathleen

Submitter Information

Name: Kathleen Czebiniak

Address:

Castle Creek, NY, 13744

Email: czebini@aol.com

Phone: 6074270566

General Comment

Please consider all data as presented in this DOAS letter when mapping. Golden eagles are the passion of the Franklin Mountain counters. Keeping that population and the bald eagle population thriving should be the passion of the US Fish and Wildlife Service. Thank you so much to best protect these wonderful species.

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 23, 2022
Status: Posted
Posted: November 25, 2022
Tracking No. lau-2c56-s9sn
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1935

Comment from Sanchez, Erica

Submitter Information

Name: Erica Sanchez

General Comment

Dear U.S. Fish and Wildlife Service,

As the U.S. Fish and Wildlife Service (USFWS) offers new rules under the Bald and Golden Eagle Protection Act, I ask that you stay focused on protecting eagles and helping their populations grow.

Both species of eagle face ongoing threats. While greatly recovered from their nadir, Bald Eagle populations need robust legal protections to continue growing. Golden Eagles, already at precariously lower numbers, face potential population-level threats from increased wind energy development.

Clean, renewable energy like wind power is an important part of our fight against climate change. Properly sited, wind energy is a win for birds, people, and the planet alike. Permitting rules like this one are vital to striking a careful balance, as we harness our abundant wind without doing unnecessary damage to wildlife.

The final rule should include various measures to mitigate impacts to Bald and Golden Eagles. Among them:

- Prioritize growth of eagle populations more than speeding along the energy permitting process. Getting it right is more important than getting it done quickly.
- Create no-go zones for turbines in the most important areas for eagles. No matter how much mitigation and compensation are provided, there are some areas that are too important for eagles to allow turbine construction.
- Require more robust monitoring under the general wind permit. Site surveys need to be done more often than every three months and should be undertaken by third-party monitors. Wind energy companies require federal oversight.

Sincerely,
Erica Sanchez

PUBLIC SUBMISSION

As of: November 28, 2022
Received: November 23, 2022
Status: Posted
Posted: November 25, 2022
Tracking No. lau-bhy3-n2nh
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

Comment On: FWS-HQ-MB-2020-0023-1903

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-1936

Comment from HawkWatch International

Submitter Information

Name: Steven S Slater

Email: jherman@hawkwatch.org

Organization: HawkWatch International

General Comment

See attached file(s)

Attachments

Proposed Rule for Eagle Permits 2022



Nov 23, 2022

Attention: FWS-HQ-MB-2020-0023

Dr. Eric L. Kershner
Chief, Branch of Conservation, Permits, and Regulations
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: MB,
Falls Church, VA 22041

Dear Dr. Kershner,

We would like to thank the U.S. Fish & Wildlife Service (USFWS) for the opportunity to provide our comments on the proposed rule for Permits for Incidental Take of Eagles and Eagle Nests. HawkWatch International, Inc. (hereafter “HawkWatch”) is a science-based, non-advocacy raptor organization with decades of experience monitoring and conducting research directed toward the conservation of Golden Eagles and other raptors.

First and foremost, we acknowledge the need to simplify and expedite the eagle permitting process to increase permit participation and mitigation opportunities, particularly for Golden Eagles. In general, Bald Eagle populations are robust and increasing throughout the U.S. (USFWS 2016, USFWS 2020). In contrast, Golden Eagle populations in the contiguous U.S. are considerably lower, and experiencing unsustainable human-caused mortality (USFWS 2016, Millsap et al. 2022). Therefore, our comments are largely directed toward Golden Eagles. Additionally, we support the creation of a general permit, whereby permitting is vastly simplified and standard fees and terms apply. However, we think the general permitting framework would benefit from further refinement. We detail our points of concern and suggestions for improvement below.

The Service has proposed to use relative eagle abundance thresholds estimated from eBird data as the basis for general-permit eligibility. Citizen science data, such as the data available through eBird, are often leveraged when entities have limited funding and human resources for collecting scientific data at broad scales. However, USFWS has invested millions of dollars and the time of expert scientists into collecting data on Golden Eagle nest locations, movements via GPS data, summer and winter abundance via aerial transects, and produced models and other products to describe Golden Eagle distributions in the contiguous United States. Given the inherent challenges and biases of citizen science data, and the availability of high-quality data from other hard-won sources, we suggest that the Service use carefully filtered eBird data as a supplement rather than the primary data source. If the Service opts to move forward with the

use of eBird as proposed, please provide detailed justification and validation of this approach in light of other relevant eagle data.

We have concerns that the currently proposed eagle take threshold of less than five eagles over five years will preclude many wind-energy facilities from qualifying for the general permit. The relatively high year-round abundance of Golden Eagles in the interior West, combined with highly sought-after wind resources, will likely result in specific permits required for most of the wind-energy facilities in this region. Arguably, this situation would result in little change in permit participation (and mitigation) for many of the existing or anticipated wind projects within the core range of the Golden Eagle where it is most needed. Moreover, facilities that have the highest eagle take, and arguably the greatest need for mitigation measures, will not be incentivized to participate in the permitting process. We suggest that the USFWS consider awarding a general permit option to existing wind facilities (e.g., those built prior to the 2016 Eagle Rule before most of the eagle guidance and rules were established) to usher non-participatory facilities into the permitting system and generate much-needed revenue for eagle take mitigation and specific permit handling. General permits would be reviewed after five years as proposed, during which time the USFWS would receive necessary data on eagle take at participating sites. The data would then inform requirements for transition to a specialized permit, if necessary. Our reasoning behind suggesting a general-to-specialized permit “pipeline” is that many existing wind facilities are currently getting a free pass and have limited incentives to apply for a specialized permit. Getting these sites in the permit system, even if eagle take in the first five permit years is not fully offset by the permit fees and conditions, is a better situation than having these sites continue to remain outside the permit system with zero mitigation.

We also believe that too much attention in the proposed rule is dedicated to the general permit conditions, while neglecting to sufficiently reduce the burden for specific permits or ease the adoption of eagle take mitigation options other than power pole retrofitting. Please provide unifying guidance for specific permits as well, to streamline the process and increase their utilization in the most important areas for eagles. Currently, there is variable guidance from each USFWS region for specific permits regarding the data required, structure of Eagle Conservation Plans, etc. We recognize that each site is unique and the USFWS has a no net loss standard to uphold. That said, no permit participation, or severely delayed permit participation, at sites requiring specific permits will conserve fewer eagles than permits that underestimate eagle mortality. These suggestions apply under the current framework, as well as the general-to-specific permit pipeline we proposed in the previous paragraph.

We are also concerned that removing third-party monitoring requirements will incentivize companies to stay below the eagle take threshold to avoid losing general permit status. We suggest adopting a more flexible, longer-term approach to general permits. For example, rather than losing general permit status if this threshold is exceeded in the first five-year permit period, fees could be increased a set amount during a second five-year general permit period. A specific permit would be required only after two five-year periods when more than five eagles

were taken per period. This time period also reflects cyclical variation in Golden Eagle populations, which naturally fluctuate over a ten-year period in response to weather and jackrabbit populations. General permits that are limited to a scope of five years will not necessarily capture an accurate picture of the relative abundance of Golden Eagles at the site. This is just an example approach. Again, if the goal is to ease the permit approach and increase participation, we believe a more flexible general permit system that allows more mitigation funds/fees to be collected when warranted, but does not remove sites from the general permit framework after “one strike” is desirable. Eagle mortality can be highly episodic and this type of tiered approach to the mortality threshold would be more reflective of that reality.

Our final point regarding the general permit mortality thresholds is that the permitting process should take the total number of turbines into consideration, in an effort to weigh energy generation benefit against eagle mortality cost. That is, a small site generating comparatively little electricity should not be on equal footing with a large site in terms of permitted eagle mortality.

In the proposed rule, the Service recommends adding a fifth justification for authorizing the take of eagle nests to protect threatened or endangered species. We recommend that this authorization apply only to Bald Eagles, which are steadily increasing in population size, but not Golden Eagles, which have a more tenuous population status. Even though Golden Eagle populations appear to be stable, the current rate of eagle mortality raises concerns as to whether they will remain stable over the long-term. Golden Eagles are currently experiencing a rate of human-caused mortality that is likely at the upper extreme of the level of take that is sustainable. Authorizing the take of Golden Eagle nests to protect threatened and endangered species may prove to be unsustainable, particularly in the interior west of the United States where conflict between Golden Eagles and Greater Sage-grouse may arise.

Finally, we point out that a large amount of data have been collected on eagle-vehicle collisions by HawkWatch International and are available to inform the use of roadkill relocation or removal as an eagle take mitigation option. In this regard, we encourage the USFWS to not require the “perfect” when the good will suffice. We know that many hundreds of Golden Eagles are being killed each winter due to vehicle strikes. We know where many of the hotspots for big game and eagle-vehicle collisions are in the West. We know that moving roadkill 12 m from the roadway will increase Golden Eagle foraging and reduce flushing 4x (Slater et al. 2022). We have basic models to evaluate the eagle savings derived from set levels of roadkill removal (Lonsdorf et al. 2018; see recent Renewable Energy Wildlife Institute [REWI] National Fish and Wildlife Foundation Report). The existing data and models can and should be used to allow companies to pursue roadkill management as a mitigation option without awaiting the additional products that are coming. In lieu fee (ILF) banks for other mitigation options should be established. Again, the benefit to eagles that can be realized by offering additional and more cost-effective mitigation options will exceed any “mitigation not realized” due to imperfect quantification of the issue. With properly designed mitigation, additional data will be collected to adapt its implementation over time. As is widely known, the single study of eagle

electrocution risk that the current power pole retrofitting program is built on is not representative of the landscape over which it is being applied, nor is the mitigation benefit credited to companies necessarily being realized due to issues with execution in the field. Simplification, adaptability, and practical options should be the theme of all aspects of the USFWS Eagle Rule, if the goal is truly to increase participation and benefit to eagles.

Thank you for your consideration of our comments and we applaud the efforts of the USFWS to increase permit participation for the benefit of eagles.

Sincerely,

Steven J. Slater, Ph.D.
Conservation Science Director

Jordan Herman, Ph.D.
Conservation Biologist

Literature Cited

Lonsdorf, E., C. A. Sanders-Reed, C. Boal, and T. D. Allison. 2018. Modeling golden eagle-vehicle collisions to design mitigation strategies. *Journal of Wildlife Management* 82:1633–1644.

Millsap, B. A., G. S. Zimmerman, W. L. Kendall, J. G. Barnes, M. A. Braham, B. E. Bedrosian, D. A. Bell, P. H. Bloom, R. H. Crandall, R. Domenech, D. Driscoll, A. E. Duerr, R. Gerhardt, S. E. J. Gibbs, A. R. Harmata, K. Jacobson, T. E. Katzner, R. N. Knight, J. M. Lockhart, C. McIntyre, R. K. Murphy, S. J. Slater, B. W. Smith, J. P. Smith, D. W. Stahlecker, and J. W. Watson. 2022. Age-specific survival rates, causes of death, and allowable take of golden eagles in the western United States. *Ecological Applications* 32(3): e2544. <https://doi.org/10.1002/eap.2544>

Slater, S. J., D. M. Maloney, and J. M. Taylor. 2022. Golden eagle use of winter roadkill and response to vehicles in the western United States. *Journal of Wildlife Management* 86: e22246. <https://doi.org/10.1002/jwmg.22246>.

U.S. Fish and Wildlife Service [USFWS]. 2016. Bald and golden eagles: population demographics and estimation of sustainable take in the United States, 2016 update. Division of Migratory Bird Management, Washington, D.C., USA.

U.S. Fish and Wildlife Service [USFWS]. 2020. Final report: bald eagle population size, 2020 update. Division of Migratory Bird Management, Washington, D.C., USA.