

# PUBLIC SUBMISSION

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**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-2020-0023-2120  
Comment from Ahlenius, Laurel

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## Submitter Information

**Name:** Laurel Ahlenius

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## 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. We desperately need to protect our eagles. They are so beautiful to watch in flight, yet endangered. They need our help and protection. Please help our national bird and all eagles and all birds. They are a precious resource!

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,



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**Docket:** FWS-HQ-MB-2020-0023  
Eagle Permits; Incidental Take

**Comment On:** FWS-HQ-MB-2020-0023-1937  
Permits for Incidental Take of Eagles and Eagle Nests

**Document:** FWS-HQ-MB-2020-0023-2130  
Comment from Alaska Power Association

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## Submitter Information

**Email:** mrovito@alaskapower.org  
**Organization:** Alaska Power Association

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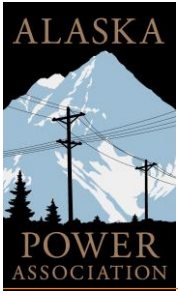
## General Comment

See attached file(s)

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## Attachments

APA Comment Letter Docket No. FWS-HQ-MB-2020-0023



Alaska Power Association  
703 West Tudor Road, Suite 200  
Anchorage, Alaska 99503-6650  
(907) 771-5700  
Fax: (907) 561-5547  
[www.alaskapower.org](http://www.alaskapower.org)

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November 29, 2022

Service Information Collection Clearance Officer  
US Fish & 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  
Comment on Proposed Rule**

To whom it may concern,

Thank you for the opportunity to submit comments that may help guide permitting approaches to the incidental take of eagles and eagle nests. Alaska Power Association (APA) is the statewide association for electric utilities in Alaska. Our members provide power to a half million Alaskans from Utqiagvik to Unalaska, throughout the Interior and Southcentral, and down the Inside Passage.

APA agrees with the US Fish & Wildlife Service (USFWS) approach of tailoring the proposed take permits to the geographic region in which the permitted activity would occur. Eagle population dynamics can vary greatly across different geographic regions, and management of those eagle populations should be specific to their geographic region. Alaska activities should be permitted under an Alaska-specific Eagle Management Unit (EMU) based on Alaska-specific eagle population dynamics. APA requests that Alaska be removed from the Pacific EMU definition and instead be defined as its own distinctly separate Alaska EMU across all eagle take permitting authorizations. It is not appropriate for Alaska to be included in the Pacific EMU, as evidenced by USFWS special treatment of Alaska versus the contiguous United States throughout the proposed rule. An Alaska-specific EMU would provide necessary clarity and consistency to the USFWS incidental take permitting program.

APA agrees with USFWS's special consideration of Alaska's robust eagle population for eagle nest take permits; however, the permitting approach for Alaska's wind energy sector and powerline operators remains unclear. With the precedent set for an Alaska-specific general permit for bald eagle nest take, APA encourages USFWS to expand the scope of this Alaska-specific general take permit to more activities in Alaska, including wind energy and powerline facilities. A single Alaska general take permit that encompasses more eagle

interaction activity would be especially relevant to Alaska small businesses, small organizations, and small government jurisdictions, as defined by the Small Business Administration. Creating a wider scope for the Alaska general take permit would support USFWS management objectives of encouraging participation in the eagle take permitting program while reducing USFWS staff burden with individual permit processing.

Reporting conditions for the eagle take permits should remain consistent with the USFWS Office of Law Enforcement's Bird Fatality/Injury Reporting Program. That reporting program was widely used on a voluntary basis by the electric utility industry, and electric utilities are familiar with that system's approach to USFWS consultation regarding eagle interaction on electric utility infrastructure.

Permit conditions for wind energy facilities should remain consistent with USFWS Land-Based Wind Energy Guidelines that onshore wind energy facilities have relied on thus far in the development and operation of their existing infrastructure. The site characterization information and impact assessments already completed in accordance with the USFWS Land-Based Wind Energy Guidelines should be regarded as relevant study data qualified for any new permitting program related to wind energy facilities. It would be unduly burdensome to require existing onshore wind energy facilities to conduct duplicative risk assessment studies under differing guidelines than what was available at the time of prior construction.

APA appreciates this opportunity to submit comments regarding USFWS's proposed rule. If you have any questions or require additional information regarding these comments, contact me at 907-771-5703 or [cenkvist@alaskapower.org](mailto:cenkvist@alaskapower.org).

Sincerely,



Crystal Enkvist  
Executive Director, Alaska Power Association

# PUBLIC SUBMISSION

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**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-2020-0023-2594  
Comment from Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Please protect the eagles from destruction. Wind energy is not reliable as was seen in Texas last year and these wind turbines are a great danger to eagles, other birds and bats. This is unnecessary, so please do your best to protect these animals, including the bald eagles and the golden eagles. There is no good reason to take parts of the eagles or to take their feathers, so please let eagles keep their feathers and body parts.

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**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-2020-0023-3196  
Comment from Brady, Loretta

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## Submitter Information

**Name:** Loretta Brady  
**Address:**  
Vestal, NY, 13850  
**Email:** lorettajbrady@gmail.com  
**Phone:** 9174970446

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## General Comment

As an educator, it is key to keep students aware that positive change can be effective if worked out thoughtfully.

The Eagle protection area needs to be carefully drawn based on solid data.

It is important that the map used for permitting accurately reflects the distribution of Golden Eagles in the east. This is an important national issue. We are urging USFWS to base the new permitting rules on more accurate maps to protect a rare and charismatic species (endangered in NY State).

There are better mutually satisfactory solutions.

Thank you for this opportunity to comment.

Warmly,  
Loretta Brady

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**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-2020-0023-3769  
Comment from Soto, Robert

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## Submitter Information

**Name:** Robert Soto  
**Address:** United States,  
**Email:** robtsoto@aol.com

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## General Comment

See attached file(s)

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## Attachments

Robert Soto comment 11292022



SUBMITTED ELECTRONICALLY

November 29, 2022

Public Comments Processing  
Attn: FWS-HQ-MB-2020-0023  
Dr. Eric L. Kershner  
Chief, Branch of Conservation, Permits, and Regulations  
Department of the Interior  
United States Fish and Wildlife Service  
5275 Leesburg Pike, MS: MB,  
Falls Church, VA 22041

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

Dear Dr. Eric L. Kershner:

As you seek public comment on approaches for expediting and simplifying the permit process authorizing incidental take of eagles according to 87 Fed. Reg. 59598 and Docket No. FWS-HQ-MB-2020-0023, I ask that you consider the impact the proposed rule will have on the religious use of eagle feathers and the protection this religious exercise bears under the First Amendment and the Religious Freedom Restoration Act (RFRA).

The proposed rule acknowledges that wind energy facilities “injur[e] or kill[] eagles that collide with turbines,” but laments that “[w]hile there are more than 1,000 wind-energy projects on the landscape,” the Department has received “fewer than 100 applications” for incidental eagle take permits. 87 Fed. Reg. at 59601-02. The Department proposes to “encourage broader participation” by the wind energy industry by making it easier for them to apply for and obtain permits to cover the eagles their projects kill. *Id.* at 59602.

This approach of “encouraging...participation” by members of an industry that is responsible for hundreds if not thousands of eagle deaths each year stands in sharp contrast with the Department’s approach to Native American religious believers, who are forever banned from possessing a single eagle feather.

I am a Native American and a leader of the Lipan Apache Tribe of Texas, a state-recognized tribe. For decades I danced and prayed with eagle feathers given to me by a relative in the 1970s. Yet in 2006, Fish and Wildlife Service agents threatened me with fifteen years in federal prison and a \$250,000 fine for possessing these sacred religious relics. It took ten years of litigation to recover my feathers. Absent this litigation, I would be forever banned from possessing a single eagle feather—even if I received it as a gift or found the feather molted on the ground. This is the situation that all Native Americans who are not members of federally recognized

tribes find themselves in today.

I believe that the Department can do better. I submitted a petition for proposed rulemaking to the Fish and Wildlife Service in 2018, asking the Service to change its rules and allow state-recognized tribes and all sincere religious believers to possess eagle feathers in peace. However, even though Fish and Wildlife granted my petition in July of 2020 and published an advanced notice of proposed rulemaking in the Spring 2022 Unified Agenda, I have not yet seen a proposed rule from the agency that would protect the religious use of feathers for all Native Americans. While I understand that the rulemaking process takes a long time, I encourage the Service to act without further delay.

The Department's long history of inaction on this issue has not escaped the notice of the federal courts. In my case, the Fifth Circuit held that the Department's current policy likely violated the Religious Freedom Restoration Act. *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465 (5th Cir. 2014). And in a case decided earlier this year, a New Mexico federal district court observed that the Morton Policy – an informal policy that the Department has interpreted to allow members of federally recognized tribes to possess eagle feathers without a permit – leaves Native American religious practitioners in a “vulnerable” position because it “do[es] not have the force of law and can be rescinded at any time.” *United States v. Skeet*, No. 21-cr-591, slip op. at 24-25 (D.N.M. Aug. 26, 2022).

The Department's continued inaction leaves Native Americans living under a shadow of fear and uncertainty. The Abenaki tribe, which is officially recognized by the state of Vermont, was so concerned that they approached the Department with a formal request that they be allowed to use eagle feathers for their prayer and religious worship. Fortunately, the Department granted their request. See Donald Stevens, Comment Letter on Proposed Rule to Revise Bald and Golden Eagle Protection Act/Migratory Bird Treaty Act (May 22, 2019), <https://www.regulations.gov/document/FWS-HQ-LE-2018-0078-0031>. Because of the Abenaki tribe's experience, Abenaki leader Donald Stevens publicly supported my petition. But the Abenaki tribe is not alone—there are many more Native Americans who continue to live under the threat of prosecution for peacefully worshipping with eagle feathers.

While wind energy projects kill hundreds of eagles a year and ignore the Department's permitting requirements, Native Americans face the threat of criminal prosecution for peacefully possessing found or inherited feathers without ever harming a single bird. I ask you to address this injustice and protect our right to use and possess feathers.

Sincerely,

Dr. Robert Soto

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**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-2020-0023-3781  
Comment from Florida Fish and Wildlife Conservation Commission

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## Submitter Information

**Email:** adrienne.fitzwilliam@myfwc.com  
**Government Agency Type:** State  
**Government Agency:** Florida Fish and Wildlife Conservation Commission

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## General Comment

See attached file(s)

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## Attachments

FWC Comments\_FWS Eagle Rule Change



## Florida Fish and Wildlife Conservation Commission

Commissioners  
**Rodney Barreto**  
Chairman  
Coral Gables

**Steven Hudson**  
Vice Chairman  
Fort Lauderdale

**Gary Lester**  
Oxford

**Albert Maury**  
Coral Gables

**Gary Nicklaus**  
Jupiter

**Sonya Rood**  
St. Augustine

**Robert A. Spottswood**  
Key West

Office of the  
Executive Director  
**Eric Sutton**  
Executive Director

**Thomas H. Eason, Ph.D.**  
Assistant Executive Director

**Jessica Crawford**  
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Division of Habitat and  
Species Conservation  
Melissa Tucker  
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800-955-8771 (T)  
800 955-8770 (V)

MyFWC.com

November 28, 2022

Public Comments Processing  
Attention: FWS-HQ-MB-2020-0023  
U.S. Fish and Wildlife Service

*Submitted via regulations.gov*

RE: Advanced Notice of Proposed Rule Making: Revisions to Permitting Under the Bald and Golden Eagle Protection Act  
Docket No.: Docket No. FWS-HQ-MB-2020-0023

Dear U.S. Fish and Wildlife Service staff:

Florida Fish and Wildlife Conservation Commission (FWC) staff have reviewed the Advanced Notice of Proposed Rule Making in the Federal Register (Vol. 87, No. 189), which describes revisions to the regulations authorizing permits for incidental take of eagles and take of eagle nests under the Bald and Golden Eagle Protection Act. We appreciate the opportunity to provide comments for your consideration.

### Project Description

The rule changes proposed by the US Fish and Wildlife Service (Service) are intended to “increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles”. The Service will continue to authorize specific permits but are proposing a general permitting process for certain activities under four options: wind-energy generation projects, power line infrastructure, activities that may disturb breeding eagles, and eagle nest take. The Service is proposing to remove the third-party monitoring requirement for incidental take permits and to update and clarify definitions related to the permitting in the rule.

### Comments and Recommendations

FWC staff is generally in support of this proposed rule by the Service intended to streamline the permitting process. FWC staff is providing comments and seeking clarification on the following related to bald eagles:

#### *Creation of General Permits for certain activities*

- FWC staff is conceptually in support of the proposed introduction of general permits for incidental take and for nest take of eagles. We support the Service’s proposal to make the distinction between take from disturbance vs. lethal take in this way.
- If the Service considers adding activities to the list of those eligible for general permits (or, conversely, removing an activity from eligibility), we recommend early engagement with FWC staff and other state agencies.

#### *Land Management Activities*

- FWC staff recommends that the Service include a regulatory authorization for land management activities beneficial to wildlife, such as prescribed fire or natural community restoration.
- National community-based land management activities create a net benefit to eagles by improving habitat near nesting areas and reducing risk of nest loss to catastrophic fire that can occur without management. Compared to disturbance from construction projects for instance, which is accompanied by permanent landscape changes that could pose risks to eagles beyond the period of the permit, any potential disturbance from natural community

management is short-term. There is a very low probability of take under these beneficial land management activities, and a long-term benefit to bald eagles and other wildlife. Many natural community restoration activities need to be conducted during a specific season or they will not be successful. Therefore, planning to avoid the eagle nesting season may not be an option, and failing to restore the natural community compromises ecosystem integrity and has potential to put the nest tree at greater risk to future catastrophic events.

- As such, these beneficial habitat management activities should face the lowest possible regulatory burden. FWC staff recommends the Service consider creating permitting framework that would allow exceptions (regulatory authorization) for state wildlife agency and partner land management activities that have a net conservation benefit but may result in take via disturbance.

#### ***Program-level audits of General Permits***

- FWC staff recommend, in the first 5-years of the proposed rule being in effect, that the Service audit more (or all) general permits to ensure that applicants are correctly identifying their eligibility for general permits, and to confirm that the Service's use of general permits is consistent with the preservation standard for bald eagles.
- FWC staff sees the value in allowing the instantaneous and standardized issuance of general permits for disturbance take and eagle nest take. To ensure that complaints about permitted disturbance and permit compliance are addressed in a timely and efficient manner, the FWC recommends that copies of all general permits issued in Florida be instantaneously sent to the FWC bald eagle email (BaldEagle@myFWC.com) and that the Service require that copies of general permits be posted and visible at the project site. We further suggest that the Service consider the feasibility and possible benefits (to stakeholders, USFWS and FWC staff, etc.) of making permits or relevant details of permits publicly available through a central repository and/or map.

#### ***Monitoring Requirements for General Permits***

- FWC recommends that the Service clarify what survey methods the applicants must execute to satisfy monitoring requirements. The FWC feels that the requirement of "information submitted is complete and accurate to the best of their knowledge" does not go into enough detail on survey methods to ensure consistent reporting of eagle mortality across general permits. Staff also are concerned that the minimum standard of visually scanning once every 3 months for carcasses may not be frequent enough, especially for long-term projects.

#### ***The Service Program Monitoring***

- The Service states that "not every site has to be surveyed every year" for rigorous systematic fatality monitoring. FWC suggests clarifying how the Service will perform this monitoring with respect to survey coverage including information on frequency, duration, survey effort per site, etc.
- Although the monitoring is "not intended to assess project-by-project compliance," what if the Service's fatality monitoring detections are very different than the self-reported detections? The FWC recommends that monitoring visits also be an opportunity to ensure the permittee is compliant with permit provisions.

#### ***Relative Abundance Thresholds for Wind Energy Take***

- The Service states that it "intends to review eagle thresholds as new eBird data become available and update thresholds when appropriate through rulemaking." As rulemaking is an arduous process, the FWC recommends the Service both make explicit when the updates to these thresholds will occur and explore establishing a process that would allow

for the update of thresholds through a technical change without initiating the rulemaking process.

- Other states/partners have expressed a lack of confidence in the relative abundance value thresholds used in Table 1 and how they were derived (Table 1). Phenology of eagles varies considerably across their range. Florida bald eagles (especially subadults and fledglings) are migrating and in non-breeding season at times when eagles elsewhere in the range are breeding. For areas that are eligible for general permits for wind energy projects (i.e., they have relative abundances below the Table 1 thresholds), is it possible that any resulting take may disproportionately impact eagles from Florida or from other southern populations within the species' range? The FWC recommends considering these types of possible impacts to subpopulations when setting these relative abundance thresholds.

### ***Nest Take***

- A growing proportion (5-10%) of Florida's 1500+ bald eagle nests are found on man-made structures (cell towers, radio towers, powerline infrastructure, light poles, etc.), many of which are in core breeding areas or make up roughly half of all bald eagle nests in some counties. FWC staff recognize the benefit of nest take general permits to industry partners, specifically the proposed ability to remove subsequent nesting attempts and nests within a half-mile radius of the initial permitted nest. Yet, the spatial scale of the Service's Local Area Populations (LAP) is large compared with many of these areas of concentrated nesting on man-made structures. FWC staff are concerned that, even if LAP take limits are not approached, continued nest take from manmade structures via general permits may result in steep population declines or near extirpation of eagle nesting from areas of the state where natural nesting substrates are limiting. FWC staff recommend that the Service consider ways to assess impacts of continuous take of nests at spatial scales smaller than the LAP, especially for manmade structure nests.
- Will the new justification for nest take for bald eagles related to threatened or endangered species *only* include Federally threatened/endangered species or will there be flexibility to apply this justification to state-listed species?

### ***Definitions***

- The FWC is conceptually in agreement with the further clarification of what constitutes an in-use nest. The FWC believes that demonstrating egg viability will be difficult in the field, and we recommend clarifying what criteria will be used to demonstrate viability (e.g., adult activity) of eggs be included in the definition to eliminate confusion.
- When nests are being built or maintained by eagles prior to egg-laying, why are they not considered "in-use nests" as they are under the Guidelines? FWC recommends including nests which eagles are tending to, building, or sitting in prior to egg-laying to be considered in-use, except in cases where there are multiple nests in a territory. In that case, if eagles tended more than one nest early in the season, once eggs are documented in another nest in the territory, the other nests become alternate nest sites. As the Guidelines point out, bald eagles are most sensitive to disturbance during courtship and nest building. Abandonment of nests prior to egg laying could potentially prevent an eagle pair from contributing offspring to a local area population that season.

### ***Conclusion***

We appreciate the opportunity to provide comments on the Notice of Proposed Rule Making for permitting under the Bald and Golden Eagle Protection Act. If you have specific technical questions about the content of this letter, please contact Jared Zimmerman at (352) 262-2661 or [Jared.Zimmerman@myfwc.com](mailto:Jared.Zimmerman@myfwc.com).

Sincerely,

*Claire Sunquist Blunden*

Claire Sunquist Blunden  
Section Leader  
Wildlife Diversity Conservation Section  
Division of Habitat and Species Conservation

cc: Adrienne Fitzwilliam, FWC  
Jared Zimmerman, FWC  
Craig Faulhaber, FWC

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**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-2020-0023-3802  
Comment from Wong-Kone, Diane

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## Submitter Information

**Name:** Diane Wong-Kone

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## General Comment

Dear U.S. Fish and Wildlife Service,

Wind power is an important green energy source prioritized for development, but it is important to develop in properly sited areas to avoid incidental take of eagles and other raptors. I urge the U.S. Fish and Wildlife to carefully consider the impacts of actions that streamline permitting for wind development if incidental wildlife take may occur. In Nevada, Golden Eagle populations are not doing well as indicated by recent wildlife biologist reports at recent Partners in Flight meetings. Reducing eagle mortality is one solution to help dwindling populations.

Increased monitoring by third party organizations that don't have a vested interest in energy development can inform development decisions so that turbines and equipment are located in areas unlikely to cause harm to eagle nesting and flyways.

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,  
Diane Wong-Kone

# PUBLIC SUBMISSION

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**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-2020-0023-3805  
Comment from Lardner, Amy

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## Submitter Information

**Name:** Amy Lardner

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## 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, it is vital that we do not put industry ahead of conservation. In 1971, when I was a nine-year old child growing up in Davenport, Iowa, I organized my 4th grade class to write letters to our congressman, Fred Schwengel, to fight for the DDT ban. Receiving his letter of acknowledgement was a big deal to me, but even bigger has been seeing the return of the Bald Eagles to the Quad-Cities, having grown up with the real fear of their extinction. As an 8 year-old child, I marched in the first Earth Day, convinced we were saving the planet. As a 7 year-old, I watched the first moonwalk, and those jaw-dropping images of the little blue planet we call home. Today, as a 60 year old, I'm now a full-time conservation volunteer, working with a number of organizations, and I have served as a monitor for two endangered avian species - one Federal, the other state. This year, I founded a new advocacy group for the state-endangered one, because a nesting site, one of only two remaining in Illinois, was adversely affected by a project last summer the state's DNR was not properly informed of. And the state DNR did nothing after the fact. My effort is gaining traction, including field research in support of new conservation efforts by a leading state university. One in 4 breeding birds have been lost in the past 50 years in the United States and Canada. We can't afford to rush new technologies in the face of pervasive and persistent threats that might reverse the advances of the past decades since 1972 for these two magnificent eagle species. We are facing long odds and fighting fierce battles on many fronts to preserve and support biodiversity. Please, let caution be your watchword. Incidental take is a slippery slope...as I have directly experienced with the state-endangered species I saw directly harmed by interpretation and lack of enforcement.

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,  
Amy Lardner

# PUBLIC SUBMISSION

<b>As of:</b> December 01, 2022
<b>Received:</b> November 28, 2022
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<b>Posted:</b> November 28, 2022
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<b>Submission Type:</b> 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-2020-0023-3812  
Comment from Ebinger, Samara

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## Submitter Information

**Name:** Samara Ebinger  
**Address:**  
Worcester, MA, 01605  
**Email:** samara.ebinger@gmail.com

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## General Comment

I fully support renewable energy including wind power operations. However, it is important to strike a balance with the needs of birds (in this case, eagles) as these and other types of projects are considered, to ensure that these species are not harmed in the process.

The final rule should include measures to reduce negative impacts of proposed projects on Bald and Golden Eagles, including the following:

- Prioritizing the growth of eagle populations more than fast-tracking the energy permitting process. Getting it right is more important than getting it done quickly.
- Creating 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 for any development.
- Requiring better 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.

Thank you for taking into consideration my comments.

# PUBLIC SUBMISSION

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**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-2020-0023-3839  
Comment from Ramirez, Jinny

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## Submitter Information

**Name:** Jinny Ramirez  
**Address:** United States,  
**Email:** ramirezjinny@yahoo.com

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## General Comment

Dear U.S Fish and Wildlife Services,

I support the installment of a general permit for incidental take of eagles and eagle nests. With the growing wind energy infrastructures, it is of most importance that conservation actions are taken. I believe a general permit will allow for more permits to be qualified and consequently increase monitoring of the eagle population. The general permit would also make applying more efficient, thus increasing compliance and participation in conservation efforts. However, I have concerns for the removal of the third-party monitoring. The proposed rule suggests removal of third-party monitoring and instead allows the permittee to self-report and submit their eagle take data. I believe this could potentially lead to incorrect data collection whether on purpose or due to inadequate employee training. If internal monitoring is allowed, then the qualifications of the employee conducting the monitoring would vary. Furthermore, there is the potential of a permittee skewing data in their favor or having bias when reporting. Unless the reports are monitored thoroughly for any false data by the Service and a uniform training plan is set in place, I suggest keeping third-party monitoring in place.

Thank you for your time and consideration.

Zimmerman, G. S., Millsap, B. A., Abadi, F., Gedir, J. V., Kendall, W. L., and Sauer, J. R.. 2022. Estimating allowable take for an increasing bald eagle population in the United States. Journal of Wildlife Management. 86:e22158. <https://doi.org/10.1002/jwmg.22158>

# PUBLIC SUBMISSION

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**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-2020-0023-4364  
Comment from Fiskin, Jensen

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## Submitter Information

**Name:** Jensen Fiskin

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## General Comment

Dear U.S. Fish and Wildlife Service,

As you know, the birds of the U.S. are facing perilous risks of extinction due to climate change, habitat loss, and other factors. So, it is essential we do everything we can to help bolster bird species populations as much as possible: bald and golden eagles included. As someone who has somewhat frequent interactions with golden eagles, I honestly can say they are a awe-inspiring species that never fails to bring joy to those who witness it. More importantly, it serves a vital role in its ecosystem, enabling services my peers and I (over 200 of whom I am writing on behalf on today) rely on.

So, 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,  
Jensen Fiskin

# PUBLIC SUBMISSION

<b>As of:</b> December 01, 2022
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<b>Submission Type:</b> E-mail

**Docket:** FWS-HQ-MB-2020-0023  
Eagle Permits; Incidental Take

**Comment On:** FWS-HQ-MB-2020-0023-1937  
Permits for Incidental Take of Eagles and Eagle Nests

**Document:** FWS-HQ-MB-2020-0023-4631  
Comment from Gun Lake Tribe

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## Submitter Information

**Name:** Lakota Hobia

**Address:**

2872 Mission Dr  
Shelbyville, MI, 49344

**Email:** mbpi\_thpo@glt-nsn.gov

**Phone:** 269.397.1780

**Government Agency Type:** Tribal

**Government Agency:** Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians a.k.a. Gun Lake Tribe

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## General Comment

See Attached

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## Attachments

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Comments for Docket No. FWS-HQ-MB-2020-0023; OMB Control No. 1018-0167



**[EXTERNAL] Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Comments for Docket No. FWS-HQ-MB-2020-0023; OMB Control No. 1018-0167**

Gun Lake Tribe - THPO Shared <mbpi\_thpo@glt-nsn.gov>

Tue 11/29/2022 7:42 PM

To: Info\_Coll, FWHQ <info\_coll@fws.gov>

Cc: Foster, Maureen D <maureen\_foster@ios.doi.gov>; Ford, Jerome <jerome\_ford@fws.gov>

📎 1 attachments (658 KB)

MBPI Comment Letter\_Docket No. FWS-HQ-MB-2020-0023\_OMB Control No. 1018-0167.pdf;

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Docket No. FWS-HQ-MB-2020-0023  
OMB Control No. 1018-0167

Good evening,

Please see the attached comments for Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (MBPI) regarding the proposed rule for Eagle and Eagle Nest Take Permits.

Thank you,  
Lakota

—

Lakota Hobia (née Pochedley)  
Tribal Historic Preservation Officer  
Gun Lake Tribe - Tribal Historic Preservation Office  
(Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians)  
2872 Mission Dr.  
Shelbyville, MI 49344  
{p} [269.397.1780](tel:269.397.1780), ext. 1255  
{c} 269.525.8125





November 29, 2022

Shannon Estenoz  
Assistant Secretary for Fish and Wildlife and Parks  
US Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240  
Info\_Coll@fws.gov

Re: Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Comments for Docket No. FWS–HQ–MB–2020–0023; OMB Control No. 1018-0167

Dear Assistant Secretary Estenoz:

On behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (MBPI or Tribe), also known as the Gun Lake Tribe, I would like to thank you for the opportunity to submit comments. The Tribe respectfully submits the following comments on the on the Proposed Rule 50 CFR 22.80 regarding the incidental taking of eagles. The proposed rule was published in the Federal Register on September 30, 2022.

The Tribe strongly opposes the destruction and disturbance of all eagles and their nests. The Potawatomi understand and maintain high reverence for bald and golden eagles. They fulfill key cultural roles within our communities, and it is of the utmost importance to maintain our connections and relationships with eagles living on our reservations and tribal trust lands, but also those living within our ancestral ceded lands. Eagles are sacred to us, and their nests need to be protected in the same ways our sacred sites and Tribal historic properties are protected. One category of tribal historic properties is traditional cultural places/landscapes. When conducting a comprehensive land survey for these historic properties, we often evaluate the presence of various plant and animal species, including eagles and their nests, as these are identified solely as sacred sites and traditional cultural places or as a contributing resource to the larger traditional cultural landscapes.

#### **Federal Trust and Treaty Rights Responsibilities**

The proposed changes raise concerns involving adverse impacts to Treaty rights, traditional ecological knowledge, ceremonial and other cultural practices, historic properties, and sacred sites. The proposed rule seeks the ability to destroy eagle nests, impacting the wetlands and forests, creating a shift in the biodiversity of the entire area which has repercussions beyond an individual nest. Further, there are concerns about air quality and viewshed which are insufficiently addressed and do not reflect a requirement for environmental review.

A treaty review prior to permit approval would be appropriate to follow the rule of law for international relationships. The proposed rule lacks a requirement for treaty review to identify how Tribal treaty

rights may be adversely impacted by the removal of eagles and eagles' nest within their ceded ancestral lands.

Any permit applications with proposed takes occurring within treaty and historic reservation boundaries needs to require an entirely separate permitting process or special permitting process under "Specific Permits" to incorporate all determinations that are typically identified through NHPA, NEPA, and other federal environmental and cultural reviews and consultations. These processes would need to be developed in consultation with Tribes.

### **Changes in language for 50 CFR 22.80**

Section (e)(ii) indicates "Increased need for traditionally practiced Native American tribal religious use that requires taking eagles from the wild." While the same language was included in 50 CFR 22.85, it remains unclear, as it does not indicate whether consultation with Native Americans is required, or whether it refers to Native Americans taking eagles from the wild. It also does not indicate which Tribal Nations would have jurisdiction or input (and to what degree) in the taking of eagles by non-Native citizens corporations, or government entities.

Section (f)(4) indicates "The applicant has applied all appropriate and practical avoidance and minimization measures to reduce the impacts to eagles." It is unclear what defines 'practical' and 'appropriate' and by which standards.

Section (h) indicates permits may be extended for up to 30 years. This increase from five to thirty years appears to be arbitrarily decided to decrease workload on the federal agency. No data has been presented to support this extended timeline for permit periods or reference to third party studies which indicate the rationale behind a decades-long permit. Without an ecological assessment, it is difficult to project the impacts of this timeline.

Additionally, it should be noted some vital protections have been removed from 50 CFR 22.85:

- Evaluation of "cultural significance of the local eagle population."
- Finding of "no practicable alternative to nest removal that would protect the interest to be served."
- Finding that "the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles."
- Evaluation of "whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal."

### **Additional Permitting Considerations**

"General Permits" indicates activities impacting eagles would not necessarily require a permit; certain categories and conditions (e.g., powerlines, wind energy, public safety and so on) could result in automatic permit approval, without environmental or cultural consultation required by the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) or additional considerations and requirements stipulated by the American Indian Religious Freedom Act (AIRFA) and Executive Orders 13007 (Indian Sacred Sites) and 13175 (Consultation and Coordination with Indian Tribal Governments).

“Specific Permits” standards are significantly diminished, particularly for eagle nests. Migration is particularly critical to a vibrant eagle population and the resulting benefits to the biodiversity of an area. Eagles return to nests for decades, and the disruption of their migration may have significant impacts on future generations of eagles. A mated pair anticipating returning to a nest which has been destroyed may result in undue stress and ultimately a lost generation of eagles in the area.

In reviewing the “General” and “Specific” Permits’ parameters, it was unclear which category the permitting of incidental take of golden eagles and golden eagles’ nests would occur under. Ultimately, due golden eagles significantly lower population size, if any permitting is allowable, it should undergo further consultation and at minimum occur under the parameters of “Specific Permits.”

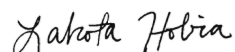
The Tribe has also identified additional concerns related to the current capacity and funding available from and for FWS to house injured mated eagles specifically for instances of injury due to returning to previous nesting locations that have been removed. If this is an issue that substantially grows, also likely due to the permit period length of 30 years, how does FWS plan to address capacity and funding concerns in the instance of increased, injured eagles? And with permit periods of 30 years, how will FWS continue to evaluate long-term, adverse impacts to eagle populations due to this rule change?

## Summary

The Notice published in the Federal Register identifies there were four total informational sessions, including two specific sessions for Tribal Nations; however, it does not identify any plans for Tribal Leadership listening sessions or government-to-government formal consultation. At minimum, we would request two Tribal Leadership listening sessions, and upon completion of the listening session, we may request formal consultation with FWS leadership and staff.

In summary, the Tribe urges the Fish and Wildlife Service to engage in further consultation with Tribes, reconsider permit period lengths, and develop further processes and strengthen language used in the permit review processes and permits that account for thorough consideration of the cultural, treaty rights, and environmental impacts of the proposed rulemaking.

Sincerely,



Lakota Pochedley  
Tribal Historic Preservation Officer  
[Lakota.Hobia@glt-nsn.gov](mailto:Lakota.Hobia@glt-nsn.gov)  
269-397-1780

CC:

Maureen D. Foster, Chief of Staff to the Assistant Secretary for Fish and Wildlife and Parks  
Jerome Ford, Assistant Director—Migratory Birds Program  
Madonna L. Baucum, Service Information Collection Clearance Officer

# PUBLIC SUBMISSION

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**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-2020-0023-4636  
Comment from Buckert, Robert

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## Submitter Information

**Name:** Robert Buckert

---

## General Comment

Dear U.S. Fish and Wildlife Service,

The final rule should include various measures to mitigate impacts on Bald and Golden Eagles:

Place the needs of eagle populations above those of the energy industry. The permitting program should be designed to grow eagle populations, rather than maintain them;  
Utilize the best available science to delineate permitting regions; and  
Require more robust monitoring of bird fatalities, among other measures

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,  
Robert Buckert

# PUBLIC SUBMISSION

<b>As of:</b> December 01, 2022 <b>Received:</b> November 29, 2022 <b>Status:</b> Posted <b>Posted:</b> November 30, 2022 <b>Tracking No.</b> lb2-cn5r-pd8l <b>Comments Due:</b> November 29, 2022 <b>Submission Type:</b> Web
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**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-2020-0023-4658  
Comment from Environmental Policy Innovation Center

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## Submitter Information

**Email:** becca@policyinnovation.org  
**Organization:** Environmental Policy Innovation Center

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## General Comment

Comments from the Environmental Policy Innovation Center.

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## Attachments

EPIC Comment\_BGEPA Proposed Rule\_2022 11 11.docx



November 29, 2022

Jerome Ford  
Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service  
email: [jerome\\_ford@fws.gov](mailto:jerome_ford@fws.gov)

Subject: [Docket No. FWS–HQ–MB–2020–0023; FF09M30000–223–FXMB12320900000 [Proposed Rule: [Permits for Incidental Take of Eagles and Eagle Nests](#)]

Dear Assistant Director Ford,

As the country builds trillions in new infrastructure, threatened and endangered species and their habitat will be impacted, but especially as America builds renewable energy infrastructure, wildlife will also be greatly benefited by the avoided climate change that infrastructure exclusively provides. While incidental take of bald and golden eagles will occur - abundant and uncommon (but not endangered) species, respectively - that should not mean we need to significantly slow down this infrastructure deployment because we can simultaneously operate programs and regulatory approaches that avoid and offset that damage. We can't achieve this ambitious goal without clear rules and approaches for avoidance, minimization and compensatory mitigation.

Our comments are focused on making compensatory mitigation for eagle impacts straightforward and flexible such that project developers have options to easily and affordably offset their impacts. We also provide thoughts on the proposed monitoring plan.

Sincerely,

A handwritten signature in black ink, appearing to be "Tim Male".

Tim Male  
Executive Director  
Environmental Policy Innovation Center

A handwritten signature in black ink, appearing to be "Becca Madsen".

and

Becca Madsen  
Director - Restoration Economy Center  
Environmental Policy Innovation Center



The [Environmental Policy Innovation Center](#) (EPIC) is a national non-profit organization focused on mitigation and offset policies as one effective tool that can be used to achieve better environmental results more quickly in the context of development and other activities that affect trust resources of all federal and state agencies.

These comments regarding the Proposed Rule on Permits for Incidental Take of Eagles and Eagle Nests are based on research on Bald and Golden Eagle Protection Act, Endangered Species Act and other mitigation policies over the last five years and time spent in government working on these same policies by one of us at the White House Council on Environmental Quality from 2014-2017.

Before we dive into recommendations, we want to **applaud** the Services' efforts in the Proposed Rule with regards to streamlining and automating permits in low-risk areas, attempting to create efficiencies with programmatic monitoring, directing applicants away from case-by-case permittee responsible compensatory mitigation, and adopting a science-based approach to understanding risk to species and methods for quantifying impacts.

EPIC's priority recommendations for the Proposed Rule include:

- **Compensatory mitigation:** Include a preference for in-advance mitigation, indicate willingness to consider new forms of mitigation including outlining a process by which new mitigation methods are approved, and extend opportunities for tribal participation.
- **Monitoring:** Consider allowing third-party programmatic monitoring, plan for a new massive dataset and consider making it publicly available, and consider allowing a self-certification of areas outside the Wind GP 'green zone' when there is ample monitoring data suggesting low risk to eagles.

We expand on the suggestions below.

### **Compensatory Mitigation**

#### **Conservation Banks**

We appreciate that the Rule includes mention of **conservation banks** both in the general compensatory mitigation section (§22.220) and the detail on mitigation for wind general permits (§22.250(f)(7)(ii)). The Service expressed in their [public webinar](#) (Oct. 20, 2022) that while only two in-lieu fee programs (ILFs) are currently available, their hope is that other banks or ILFs come forward to seek approval and a greater marketplace develops to provide compensatory mitigation. To do this, the Rule should include more text to provide some degree of certainty for those attempting to develop new solutions. However, the Rule fails to include any information on the process by which a bank applicant can get a bank approved. At minimum, the Rule should include one paragraph that references the process and timelines used under existing Conservation Banking guidance and state that applicants should generally follow the information requirements in that guidance for eagle banks and could expect from the Service similar timelines for review. It makes sense to use an approach that already works for one part of your agency for this subset of non-listed wildlife.

#### **Approval of additional methods of compensatory mitigation**

For more than 12 years, permittees and others have been discussing the need for multiple compensatory mitigation methods for eagles. However, only existing power pole retrofit ILFs are mentioned in the Rule as a form of mitigation. Has the Service really made so little progress in 12 years that habitat offsets, roadkill management, and other forms of compensation cannot yet be approved, even though many of these same methods are in wide use for species of greater conservation concern listed under the ESA?

The Rule could help by **mentioning other forms of potential future mitigation**, as they did in the EA:

*“Examples of compensatory mitigation activities could include retrofitting power poles to reduce eagle electrocution rates, removing road-killed animals along roads where vehicles hit and kill scavenging eagles, or reducing lead levels in carrion or offal. To date, the Service has only approved one compensatory mitigation activity – power pole retrofits, but we are assessing others and expect to approve other methods in the future based on what we learn from case-by-case approvals.”*

The above statement is not enough, however, as assessment on a “case-by-case” basis has resulted in the USFWS imposing a higher standard on acceptability of offset approaches compared to any other agency or the Ecological Services within your own agency. The Rule should mention at least a skeleton of **a process by which new compensatory mitigation methods would be approved**. If guidance for this is anticipated, the Rule should mention this. The process should include **accepting the science and information that is available** for quantifying benefit to eagles, a timeframe for the approval process, accountability / transparency measures, and opportunities to balance risk with assurances.

Our perspective from years of discussions with Service staff and permittees is that the agency is waiting for an unattainable degree of perfect science before accepting mitigation alternatives. It’s the wrong approach. A better approach would be to follow the example of the EPA in the Chesapeake Bay, where nutrient reduction quantities are calculated for hundreds of practices and activities. That approach is based on available science and expert input. It takes approximately 3 years to assign value to a new compensatory mitigation activity for nutrient pollution. Models and estimates are never perfect so periodically, the model is updated to reflect new valuations. The Chesapeake Bay example is just one of many approaches in use for other resources that the Service could follow here.

#### **Preference for advance mitigation.**

The Service previously proposed an agency-wide preference for compensatory projects that prove their value before impacts occur over projects that only provide benefits after impacts are allowed. While that policy was overturned by political appointees in the past administration, our understanding is that new policies would restore it. Therefore, we question why the Service is silent on this preference in this policy and is instead giving indirect support for the opposite preference by giving so much attention to in-lieu fee (ILF) approaches which generally only attempt to create benefits for species after impacts occur.

While only ILFs are currently available, the Service should anticipate potential in-advance compensatory mitigation in the future and follow the Service’s [2016 ESA mitigation policy](#) which creates a preference for in-advance, consolidated mitigation per Section 6.1.2 and 6.1.3 (anticipated to return soon). Stating this preference would provide an incentive to create mitigation that reduces the risk of mitigation failure.

### **Tribal compensatory mitigation leadership**

The Service has a unique opportunity to **extend mitigation opportunities to tribes** through the Rule. We recommend the Service consider incentivizing tribal participation in such golden and bald eagle compensatory mitigation. The tribal interest in mitigation of golden and bald eagles is significant because eagles are culturally connected to various Tribal traditions. Thus, thriving golden and bald eagle populations are pertinent to both tribes and the Service. For example, the Service could recommend that mitigation banks located on tribal lands receive a higher priority in the compensatory mitigation prioritization framework mentioned above. Alternatively, the Service's regulations could encourage tribes to develop programs on tribal lands to create hubs for eagle mitigation. Tribal lands could also serve as eagle nest relocation points for surrounding areas.

### **Monitoring**

The Service is proposing to spend twice as much on monitoring as on conservation (i.e. offsetting). For example, [Table 2](#) in the preamble of the Proposed Rule estimates \$100,000 for monitoring and \$40,000 on conservation under the wind general permit; and \$2.1 million in monitoring and \$578,000 in conservation for a wind energy specific permit. It is difficult to imagine any rational scenario where a wildlife conservation agency would propose this.

We support the concept of using pooled monitoring to create cost efficiencies; however, we have concerns that the existing monitoring plan is not something the Service has any experience in implementing and is unrealistic. A backup plan is needed in several areas.

For example, the Administrative fee that covers monitoring is based on an assumption of a certain level of participation in the Wind General Permit. When government agencies take in fees to deliver a service, they consistently either (1) underprice the service, thereby requiring a hidden subsidy from taxpayers to make up the cost difference, or (2) underperform on obligations (in quality, quantity, or timeliness) in order to stay within budget. Given the recent challenge to recruit staff to government agencies, we doubt the federal government's ability to quickly hire the extensive, specialized staff needed to implement the monitoring plan. Furthermore, a federal agency that issues permits should not be in a position of relying on financial resources that are conditional on permit issuance because it creates a perverse incentive to approve them.

We believe that **contracting the programmatic monitoring to a third party** is more likely to be able to carry out a focused and cost-effective take monitoring program that crosses public and private lands, and produce monitoring results and data in formats and APIs (application programming interfaces) that are more useful both to the agency and to parties affected by or interested in eagle conservation and mitigation. A potential alternative to that is to have the agency collect resources for pooled monitoring, and to use an RFP process to hire third party contractors to carry it out. In some ways, doing so is analogous to how the State of North Carolina carries out its in-lieu fee program. North Carolina collects those fees and then runs RFPs to buy wetland/stream mitigation credits from completed advance mitigation projects. While one is for mitigation and the other for monitoring, the structure could be similar, and the outcome is to allow more reasonable and competitive pricing for larger contracts for services.

The Service should also **anticipate the large influx of data associated with permitting and monitoring.** The Proposed Rule mentions applicants providing data on the “number of turbines, rotor diameter, and location coordinates;” data on electric power lines; location coordinates of eagle nests; permittee data on injured and dead birds; and all of the data associated with programmatic monitoring. In anticipation, the Service should plan for the digital infrastructure required to collect, share, and use this information efficiently. Too often useful data are locked away in permit documents and not shared with those who could learn from it. For example, could some or all of this information be provided publicly (potentially under a protected data agreement)? There is an opportunity for the data to be used for siting, and potentially for creating new risk assessment tools. Careful attention to the digital infrastructure around these permit data will be essential for enabling its full use over time.

Finally, the Wind General Permit is only available in the ‘green zone’ (areas of designated low risk to eagles) but it is possible that a facility outside the green zone may already have years of monitoring data indicating low risk to eagles (e.g., a lack of eagle injury or mortality). The Service should consider allowing applicants to be able to **‘self certify’ low risk in their area, given a certain number of years of monitoring data** and allow that facility to be covered under the General Permit. To balance the potential risk, the Service could bump up the site’s potential for audit.

# PUBLIC SUBMISSION

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**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-2020-0023-4662  
Comment from Barker, Mike and Jocelyn

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## Submitter Information

**Name:** Mike and Jocelyn Barker  
**Address:**  
Bozeman, MT, 59715  
**Email:** mjbarker53@hotmail.com  
**Phone:** 14065810629

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## General Comment

Dear Folks at U.S. Fish and Wildlife Service - We appreciate your efforts to ensure healthy eagle populations in the United States. Since bald eagles are doing so well in North America, our comments are focused on golden eagles. We are encouraged by the recent research in Alaska indicating there are more golden eagles in Alaska than many of us have thought. We are encouraged by all the efforts underway to better understand the "eastern" golden eagle population. In general, the collective efforts by many have the potential to significantly benefit the golden eagle population in North America. We encourage the USFWS to show even stronger leadership. Here are some suggestions that have been made by folks much smarter than us:

1) expanding the options for compensatory mitigation - there are many ways that concerned stakeholders can play a role in reducing golden eagle mortality. We hope you will encourage more flexibility in giving novel ideas an earnest effort and giving some credit for trying, even if those efforts aren't overly successful. Relocating road kills further from the right of way, helping ranchers relocate eagles that are killing livestock, working with raptor rehabilitation experts to improve release success, working with various stakeholders like Native Americans and wind energy companies to breed golden eagles in captivity and learn how to successfully release them to the wild, and creating more nesting habitat and nest sites all have the potential to have a positive impact on golden eagle numbers.

2) creating suitable nest sites. High quality nest sites are likely a limiting factor for the golden eagle population. Given the number of "floaters" in the golden eagle population, we believe they aren't able to find suitable nesting sites. The old cottonwoods that golden eagles use in many parts of the West are slowly disappearing. Human development activities are encroaching more and more into golden eagle nesting territories. We encourage more research into the creation of new nest sites and using some of them initially as "hack sites" for captive bred golden eagles. Don't get too hung up on genetic purity. Golden eagles are Holarctic and capable of amazing migration and exploration. The various sub species have been breeding with one another for untold millennia.

3) bringing the key stakeholders together to collaborate on golden eagle management and conservation. Don't keep your potential allies at arm's length. This must include not only wildlife agency scientists and academia. Raptor rehabilitators, ranchers, powerline companies, wind energy companies, tribal representatives, ammunition manufacturers, and various NGOs should be brought together by USFWS into working groups that look for ways to mitigate anthropogenic mortality rates and to increase nesting success. Unfortunately, we have seen efforts to meet with various stakeholders rebuffed by USFWS.

Please keep up the good work. It is easy for all of us to find fault in your various efforts to make the world a better place for fish and wildlife. The more your stakeholders feel you are making an honest effort to listen to and collaborate with them, the less likely for groups to take legal action and tie you up with lawsuits and FOIA requests. We appreciate this opportunity to share our thoughts.

Respectfully,  
Mike and Jocelyn Barker

# PUBLIC SUBMISSION

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**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-2020-0023-4678

Comment from Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Does this permit include solar power?

# PUBLIC SUBMISSION

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**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-2020-0023-4679  
Comment from Barnes, Valerie

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## Submitter Information

**Name:** Valerie Barnes  
**Address:**  
Fayetteville, PA, 17222  
**Email:** vbarnes888@gmail.com

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## General Comment

The proposed rule seems to generally trust permit holders to report data required. This is fine if the permit holder honestly cares about Bald and Golden Eagles. If not, the trust is misplaced. Many offenders of the intended rule won't get permits and thus, won't report data about eagle or eagle nest takes. For the species to survive and thrive, adequate "muscle" must be funded within the government so that the intended rules are followed and are enforced. Please do not abandon the concept of reviewing permit applications before they are issued. Please do maintain adequate "teeth" to ensure permit holders follow the rules and that those who take eagles or their nests without a permit are prosecuted and heavily fined. The regulation should focus on improving the eagle populations, not just maintaining them. There must be robust requirements to monitor and report in a timely fashion eagle injuries and deaths,



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**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-2020-0023-4682  
Comment from Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Multiple studies have been initiated to capture and fit transmitters to Golden Eagles wintering in the southeast. Results demonstrate the eastern population does not simply pass through states in this region, but in fact individuals are spending the winter and returning to the same area in subsequent winters. These areas are mostly forested habitat. EBird maps categorize these states as either not part of the winter range of the eastern population or as rare during winter. Furthermore, based on timing of images from cellular cameras used in these studies the number of individuals wintering in these areas is greater than most expect. How will the Service incorporate more rigorous data from telemetry studies into the modeling effort that is being proposed to inform the permitting process?

Aside from these studies, if one observes a Golden Eagle in a state that is not considered part of the winter range or this subspecies is categorized there as rare, the observer cannot simply report it to eBird on their checklist. It requires writing a description that includes field characteristics used to identify the bird and ideally submitting a photo. This encourages observers to second guess their observations as those of subadult Bald Eagles, which do not require submitting field characteristics nor photos. Requiring this level of justification coupled with this subspecies using predominantly forested habitat during winter leads to under reporting of this subspecies in these states and negatively biases the dataset used in the modeling effort to inform risk and issuance of incidental take permits. How is the Service accounting for these types of biases (underreporting observations due to eBird requiring written description/photos and decreased ability to detect individuals in forested habitat, among others biases)?

# PUBLIC SUBMISSION

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**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-2020-0023-4683

Comment from Calcagno, Andrew

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## Submitter Information

**Name:** Andrew Calcagno

**Address:**

Scandia, MN, 55073

**Email:** ajc02@warppmail.net

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## General Comment

Do it now

# PUBLIC SUBMISSION

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**Docket:** FWS-HQ-MB-2020-0023  
Eagle Permits; Incidental Take

**Comment On:** FWS-HQ-MB-2020-0023-1937  
Permits for Incidental Take of Eagles and Eagle Nests

**Document:** FWS-HQ-MB-2020-0023-4691  
Comment from Black Hills Energy

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## Submitter Information

**Email:** nathan.groh@blackhillscorp.com  
**Organization:** Black Hills Energy

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## General Comment

Black Hills Energy has reviewed, supports, and applauds the U.S. Fish and Wildlife Service's Proposed Rule for Permits for Incidental Take of Eagles and Eagle Nests posted on September 30, 2022, and has the attached comments.

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## Attachments

2022-11-30\_Letter\_Comments to USFWS



Nathan Groh  
Environmental Manager  
Nathan.Groh@blackhillscorp.com

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Cheyenne, WY 82001  
Office: (307) 778-2115  
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November 30, 2022

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

**RE: Proposed Rulemaking for Permits for Incidental Take of Eagles and Eagle Nests  
Black Hills Energy - Comments to USFWS**

To Whom it May Concern:

Black Hills Energy (BHE) is a natural gas and electric utility company that provides energy to residential, commercial, and industrial customers across South Dakota, Wyoming, Colorado, Iowa, Nebraska, Kansas, and Arkansas. Despite proactive measures to mitigate negative interactions, BHE's has the potential to impact protected avian species through our electric generation and distribution activities. BHE has reviewed, supports, and applauds the Fish and Wildlife Service's (USFWS) Proposed Rule for Permits for Incidental Take of Eagles and Eagle Nests posted on September 30, 2022 and has the below comments.

**Incidental Take Permits**

- **Black Hills Energy Applauds the Proposed Rule**

BHE finds that the proposed rule is very comprehensive and supplies more simplicity and certainty when considering the benefits of acquiring a take permit. BHE applied for an eagle take permit in April 2021 for a wind energy facility and has yet to hear from USFWS regarding this application status. Any steps to expedite the process of acquiring a take permit would help utilities reduce risk and protect eagles. Furthermore, providing a means for utility companies to obtain a permit for incidental takes on power lines is very beneficial for utilities who strive to reduce potential compliance risk and have an open dialogue with USFWS on steps to manage eagle protection.

**Recommendation:** USFWS may consider relaxing the take threshold requirements or eliminating them altogether when an entity considers applying for a general take permit. The intent of the program is to entice companies to participate in it to protect eagles with the provisions outlined in the permits that are designed to protect eagles. The thresholds may limit participants based upon calculations using variable/subjective background data.

## Mitigation Strategies

- **Service-approved conservation bank**

BHE agrees that a practical and useful process for mitigating eagle offsets is acquiring eagle credits as proposed in the new rule, but there currently is not a centralized conservation bank that can be easily utilized by utility companies who need those offsets.

**Recommendation:** BHE suggests that having a conservation bank established by USFWS would save time and resources for utility companies who would otherwise have to set up conservation banks themselves. Furthermore, a centralized conservation bank run by USFWS would ensure consistency in tracking and purchasing credits and less documentation requirements for utilities. If the Service elects not to manage, then USFWS should outline the criteria for the banking requirements.

- **Retrofits**

USFWS indicates that a company covered under an Eagle Incidental Take Permit for Power Lines must implement mitigation immediately as part of a retrofit strategy. It may take up to a year to complete the mitigation due to supply chain issues, ability to take an outage on the system, and location where the fatality occurred. BHE wants to clarify that starting the process of planning a retrofit can start immediately but actual work may not start for an extended period of time.

**Recommendation:** Modify language to state mitigation will begin immediately. This could include planning or acknowledging that the corrective action or the retrofit may not occur immediately.

Black Hills Energy is directly impacted by the USFWS proposed rules and hopes these comments provide valuable feedback for consideration in the adoption of updated regulations.

Should you have any questions or concerns, please contact me at (307) 778-2115.

Sincerely,



Nathan Groh  
Environmental Manager

Submittal Electronically via Regulations.gov

# PUBLIC SUBMISSION

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**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-2020-0023-4737  
Comment from Friends of Big Bear Valley

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## Submitter Information

**Email:** fobbvinfo@gmail.com  
**Organization:** Friends of Big Bear Valley

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## General Comment

Please see our attached comments.

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## Attachments

Fobbv comments FWS bald eagle take permit changes 112022



P.O. Box 422, Fawnskin, California 92333  
[www.friendsofbigbearvalley.org](http://www.friendsofbigbearvalley.org) [fobbvinfo@gmail.com](mailto:fobbvinfo@gmail.com)

November 28, 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

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

We are writing in response to the request from the Service for comments, concerns, and recommendations regarding the Draft Rule on permitting incidental take of eagles protected under the Bald and Golden Eagle Protection Act.

Friends of Big Bear Valley (FOBBV) is a 501(c)3 nonprofit founded in 2001. Our mission, as an educational environmental nonprofit, is to protect and preserve the unique and irreplaceable natural habitats of Big Bear Valley through monitoring, education and advocacy about its environmental value and community benefit. As part of that mission, we, in partnership with the local U.S. Forest Service Mountaintop District, installed (in 2015) and continue to maintain a live stream bald eagle nest camera on the first and still only bald eagle nest in our valley. That camera and the associated social media pages now have over 500,000 followers worldwide and our organization has become a public resource for education about bald eagles. This live stream is also utilized by dozens of classrooms around the country as part of their key learning about our natural environment.

We appreciate the U.S. Fish and Wildlife Service's effort to address potential sources of incidental take of bald and golden eagles. Eagles are still intensely important species throughout our ecosystems. Even with the very welcome increases in eagle populations in other parts of the country, bald eagles are still listed as an endangered species for the state of California.

Thank you for the opportunity to comment on these draft changes.

**Agreement with proposed changes:**

We are in agreement with...

1. ...the Service's proposal to use relative eagle abundance as an eligibility standard for wind-energy general permits. It is logical and valid to assume that siting of wind energy projects in areas where fewer eagles occur remains the best method to avoid and minimize eagle take.
2. ...the statements in these proposed changes that Alternative 2 of the DEA would be a preferred option, thus requiring all turbines be greater than one mile from a bald eagle nest and greater than two miles from a golden eagle nest and that no eligibility criteria be based on eagle relative abundance.
3. ...the Service's proposal to continue requiring implementation of all practicable avoidance and minimization measures to reduce the likelihood of take in all areas covered by permits, including reducing eagle attractants at a site.

### **Concerns regarding proposed changes:**

1. One of our biggest concerns regarding the Service's proposed changes is the elimination of the requirement that independent third parties conduct monitoring associated with long-term permits for incidental take of eagles. Even if the rule has proven impracticable to implement at some projects, there are many intermediate options that could be implemented rather than completely dropping the requirement. Elimination of this requirement leaves the industries to monitor themselves. As referenced in this FWS document regarding the reason for these proposed changes, there is a very low number of permit applications compared with those that are required to obtain a permit. Industry has therefore already shown itself to lack either education or integrity in the area of self-monitoring. Leaving that as the primary enforcement of these permits is wholly inadequate. Possibilities for intermediate processes that could be done without eliminating this requirement:
  - a-work with universities to have students, properly trained in identification and monitoring, as third-party monitors as part of their environmental education process. Require additional or a portion of the fees from the applicant to fund these programs.
  - b-bring in interns that report the FWS, who obtain proper training in identification and monitoring from FWS and are assigned specifically to this task.
  - c-establish an FWS monitored volunteer program that includes training of volunteers in proper identification and monitoring techniques and procedures and manage the assignment of volunteers to the 3<sup>rd</sup> party monitoring duties.
2. There are no real teeth in the enforcement of the requirement to apply for permits or to accurately report as specified in the permit. Even with the applicant being subject to criminal penalty under [18 U.S.C. 1001](#), without proper 3<sup>rd</sup> party monitoring there is a large probability that falsified reports or underreporting would not be found. The random checks suggested by the service have intervals too infrequent to actually be able to make a significant difference – once a check has been completed, the permittee is then assured they have a large window where they will not be monitored or checked, leaving the opening for abuse of the



system. There needs to be completely random checks on an unannounced frequency basis so there is no heads up to the permittee on when they can slack off of the requirements. There need to be much stronger and clearly enforceable penalties for non-compliance.

3. The availability of permits with tenure up to 30 years is way too long, even for specific permits. That timeframe is two full human generations and at least six eagle generations with immense changes possible on both sides during that amount of time. Based on changes that happen in bald eagle activities and transitions, a tenure of 5 years, with at least one review during that 5 years, would be much more appropriate in the goal of actually working to protect the eagles.
4. The elimination of the 5-year administrative review of permits seems counter to the actual purpose of these permits. The purpose of requiring these permits is to protect the eagles and their populations, not to make it easy on industry. These companies are entering a space with known risks and the possibility that these permits might have changing mitigation requirements is one of those risks. It is not the government's nor the public's job to mitigate risks to industry. There are other ways of encouraging and enforcing more required participation in the permitting process than by taking all the teeth out of the process simple to make it easier for industry. The profits that industry makes from their services because they take the risks. That is already built into their business models. It is the FWS job to protect the eagles and enforce the regulations in whatever way in necessary to do that.
5. It does not seem reasonable that if a new nest is constructed within 2 miles of project infrastructure after issuance of a general permit, the project may continue to operate under the general permit through the duration of the permit term. Even in a 5 year length of permit, much harm could be done to the adults and/or the offspring of that nest. It seems much more feasible that those situations be visited on a case by case basis with the possibility that there are mitigations that could be enacted that would greatly benefit the eagles but would no or minor harm to the permittee. To actually protect the eagles, as this permitting process is intended to do, all possibility of added protection must be allowed for.
6. The 660-foot buffer for bald eagle nests does not take into account areas where there are small numbers of nests and the eagles establish and utilize a much wider territory. As we have observed in 7 years of close monitoring of the only nest in our valley, their defendable territory covers a bigger area, at least up to ½ mile from the nest. We've have a 2<sup>nd</sup> wide angle camera on the nesting area for the past 2 years and the eagle pair definitely defends beyond the ¼ mile area. Also, especially with bald eagles, the area between their nest and their water-based food source is a significant part of what they consider to be their territory and the area that must be defended by them. This buffer area for bald eagle nests needs to be expanded, especially in low density nesting areas at a minimum.

7. There is insufficient procedure in the proposed process to protect the sharing for information about the location of eagle nests and to keep it from being broadcast out into the public arena. Even as a small nonprofit focused on a single nest, we have seen how carefully any information about the nest location must be protected. It is not effective to add another layer of danger to the eagles in the process of working to protect them.
8. While we are in agreement with the 4-eagle threshold in general, that threshold should include the sum of both bald and golden eagles, rather than the count being separate. Counting them separately makes the threshold actually 8, which is far too high to serve as legitimately intended protection of both species.
9. In the true protection of the eagle species, it should not be the government's priority to focus the procedures primarily on reducing the costs to the regulated community. For fatality monitoring, every site does need to be surveyed every year so that actions can be taken quickly to mitigate when issues arise causing a significant number of eagle deaths.
10. There is nothing mentioned about coordinating with state agencies regarding these permits and policies. Especially in states that have their own protections for eagles in place, it seems essential that some level of cooperation and coordination between agencies would assist greatly in improving the protection of both bald and golden eagles.
11. Regarding incidental take of eagle nests, this concept seems counter intuitive to protection process. The Bald and Golden eagle protection act requires that surveys be done to locate any nests in a project area. If these surveys are done as required and done properly, then eagle nests would be located during these surveys, especially considering the average size of eagle nests is over 5-feet in diameter and therefore hard to miss. If there is awareness of the nest, then the taking of the nest would not be incidental. And there is no reason, in protecting bald and golden eagles, that the priorities of a project would override the need to avoid the eagle nest and therefore the potential increase in the eagle populations. This take, which is in no way 'incidental' should not be allowed.

Again, thank you for the opportunity to comment. We look forward to seeing these changes in the final decision.

Sincerely,

A handwritten signature in cursive script, reading "Sandy Steers".

Sandy Steers  
Executive Director