

PUBLIC SUBMISSION

As of: December 01, 2022
Received: November 28, 2022
Status: Posted
Posted: November 30, 2022
Tracking No. lb1-lyr7-qukp
Comments Due: November 29, 2022
Submission Type: API

Docket: FWS-HQ-MB-2020-0023

Eagle Permits; Incidental Take

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

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-5363

Comment from Howard, Sally

Submitter Information

Name: Sally Howard

General Comment

Dear U.S. Fish and Wildlife Service,

Eagles are such an important part of our ecological web. I've experienced their awe-inspiring sight of their soaring flight in this region along Lake Ontario shores near Rochester and the hills of the Finger Lakes Region of New York State. They are our national symbol and are still recovering from near extinction. In efforts to streamline the permitting process, the permitting and permitted kill numbers should:

- (a) be designed to enable the eagle populations to GROW, not just maintain current levels.
- (b) be based on the best available science,
- (c) should encourage the proactive reduction of turbine speeds during hours and seasons that will significantly reduce eagle killings, and
- (d) require more third-party monitoring.

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,
Sally Howard

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-2020-0023-5364

Comment from Hummel, Lani

Submitter Information

Name: Lani Hummel

General Comment

Dear U.S. Fish and Wildlife Service,

I am old enough to remember a time when we thought we would lose bald eagles forever. I know how that feels. So, I am asking that when you develop a final rule, please place the needs of eagle populations above those of industry. Also, utilize the most current science, including research that demonstrates that bird deaths can be reduced by up to 70 percent if a single wind turbine blade is painted black. Finally, require more rigorous monitoring of bird fatalities.

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.

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- 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,
Lani Hummel

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-2020-0023-5366

Comment from Hudson, Samuel

Submitter Information

Name: Samuel Hudson

General Comment

See attached file(s)

Attachments

Formal Comment on Incidental take of eagles and eagle nests

November 29, 2022

Public comments processing, Attn: FWS-R1-ES-2022-0061

U.S. Fish and Wildlife Service; MS: PRB/3W

5275 Leesburg Pike

Falls Church, VE, 22041-3803

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

FF09M30000-223-FXMB12320900000

Dear sir/madam

Introduction:

The goal of this comment to the federal register is to agree with the proposed allowance of easier granted access to incidental take permits regarding bald eagles (*Haliaeetus leucocephalus*) and their nests in areas where powerlines and wind turbines are constructed and are in use. Third-party involvement with permits under the current ruling from the 2016 Eagle Rule based off the Eagle protection Act add unnecessary action to allowing the continual permits these operations need to continue doing their jobs. As proposed by the United States Fish and Wildlife Service (USFWS), I agree that a more standardized process for granting general permits for incidental take of the bald eagle and nests should be created to reduce the number of hoops one must jump through to obtain disturbance and incidental take permits around powerlines that are new or old as well as wind energy sites that are active. In 2007, the bald eagle was taken off the official list of threatened and endangered wildlife because of the successful conservation efforts by many organizations and the USFWS. This proposal by the USFWS is not to limit conservation and monitoring of bald eagles but to make it easier for companies to obtain and maintain incidental take permits for bald eagles and their nesting sites.

Natural history and Population Status:

Bald Eagles can be found throughout North America in areas relatively close to bodies of water. This species is only found in North America, ranging from the Mexican border up into Canada and from the east to west coast. Bald eagles are primarily fish-eaters, but they are known to scavenge on a variety of other things as well. Their preference for nesting includes tall trees that

range from alive to old snags that offer a good vantage point. Bald eagles can adapt to human presence and be comfortable around humans, but they do tend to avoid humans in normal environments. These birds are known for making long-term bonds with their partners. Bald eagles reach sexual maturity around the age of 4 to 5 years old and can live up to 30 years in the wild with several instances of longer life recorded. Females can reach around 14 pounds and males can reach around 10 pounds. Bald eagles are solitary, monogamous animals that spend their lives alone for the most part except for their mates. If one mate dies, the remaining bald eagle will search for a new mate the following breeding season. In the late 1800s, the population of bald eagles in North America was around 100,000 breeding pairs, but illegal harvest combined with habitat degradation and use of harmful insecticides such as DDT caused severe population decline in the species. By 1963, there were only 417 mating pairs of bald eagles recorded. When DDT was banned in 1973 and with the aid of the Endangered Species Act, this species was able to make a remarkable recovery. The current estimated population of bald eagles in the lower 48 sits close to 316,000, a monumental difference from once it was listed in 1968 when there were around 300 mating pairs of bald eagles. This number excludes Alaska, where the bald eagle population is soaring and did not see as much decline as the population of bald eagles in the lower 48.

Conservation Status and Proposal's Relation to Five Threat Factors

The bald eagle was in critical danger at the end of the 1960s when it was originally placed under the Endangered Species Management Act because of harmful pesticide use as well as habitat loss. DDT was a widespread chemical used in the United States as well as other countries, but as this chemical washed into the waterways of the US, fish absorbed the chemical and it was biomagnified when consumed by birds of prey and other predators. This chemical compound caused the eggshells of raptor species to be very fragile, and as a result, bald eagles and other species saw a great decline in population due to lack of reproductivity. The Bald Eagle Protection Act of 1940 already made it illegal to harm or take this species, but finally, scientists were able to figure out what was doing so much damage to eagle populations. Since the banning of DDT in the United States and combined efforts from the USFWS to protect eagles and their habitat, bald eagles began to rebound at a steady rate. Today, bald eagles are still protected federally by the bald and Golden Eagle Protection Act, but their population has increased enough to be delisted from the Endangered Species Listing.

This proposal by the USFWS is being suggested in order to create an easier guide to follow when obtaining incidental take permits, specific and general disturbance permits, and nest take permits. Their has been criteria proposed for each so that those seeking permit application are able to figure out what is needed for them to be within the law. These changes will require those seeking permits and permittees to monitor things such as eagle mortality or injury on wind turbine or powerline sights that are old or new and eagle numbers in areas where projects are set to be built

on a case-by-case basis. This gives permittees more flexibility to work around old nest sites that are no longer in use or in areas where eagle density is lower than what should be of concern.

Conclusion:

This proposal by the USFWS is designed to create a better process for allowing permitting to companies and landowners for incidental take and disturbance permits based on the situation and need in a case-to-case basis. This will be more efficient than the short-term permits that are in place now that must be renewed more frequently and involve third-party monitoring of each instance. By being able to evaluate each instance a permit may be needed, the USFWS will be able to issue permits easier and more specific to the situation they are needed in. Since bald eagles have had such rapid and successful recovery and are no longer listed on the endangered species list, some leniency can be afforded to certain instances where harm may not be as detrimental as in other cases.

Thank you,

Sam Hudson

Tel: 229-520-7188

Email: shudson4@stallions.abac.edu

Literature Cited

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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-2020-0023-5367

Comment from Horton, Joanne

Submitter Information

Name: Joanne Horton

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. Protecting the larger raptors from badly placed "Bird Blenders" will also protect smaller birds, shorebirds, pelagic birds from avoidable death by twirling blades.

To me, a process that authorizes an "incidental take of eagles" is irresponsible wildlife protection. I read a story of a job at a wind farm had such a high turnover (some less than a month employed) due to the gruesome job of removing a large number of dead birds off the ground. I believe that was in San Luis Obispo or north Santa Barbara Country, the comment from one of the former employees.

A past report on wind energy construction mentioned blade size/shape & height of the structures, as well as locations, as critical to birds safety.

Ultimately, humans need to seek the energy solutions with conservation, lifestyles readjustments that don't compound the demise of other species.

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,
Joanne Horton

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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-2020-0023-5657

Comment from Kenner, Kate

Submitter Information

Name: Kate Kenner

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.

---One would think that as then national bird the Bald Eagle would be given better treatment and thus the Golden Eagle as well. Even aside from that fact, eagles (and all birds) are under threat every day from human civilization and the barriers and other dangers we put in front of them. They need provisions and protections to keep them safe from what people do. They are not mere objects but living and feeling beings who help ecosystems and nature thrive. Mostly, they need protection because they should have the right to survive and thrive without being in danger so much of the time (all the time really).--

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.

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every three months and should be undertaken by third-party monitors. Wind energy companies require federal oversight.

Sincerely,
Kate Kenner

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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-2020-0023-5675

Comment from Keefer, Timothy

Submitter Information

Name: Timothy Keefer

Address:

Middlebrook, VA, 24459

Email: timothy.keefer@gmail.com

General Comment

The Proposed Rule would be detrimental to the sole Golden Eagle population in the United States located East of the Mississippi River. This is a small, migratory, vulnerable population that migrates along ridge lines that have become of interest to wind power development projects. One project (Rocky Forge) is to be sited right near its southern winter breeding area in the Commonwealth of Virginia. Oversight and accountability are the hallmarks of any properly run governmentally-regulated program. Allowing Golden Eagle takes without third-party monitoring is to leave this small, potentially vulnerable, and geographically-isolated population of Golden Eagles to the mercy of industries that have no interest in its survival. The American public expects more of its trusted stewards of natural resources.

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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-2020-0023-6222

Comment from Louisiana Department of Wildlife and Fisheries

Submitter Information

Email: rdobbs@wlf.la.gov

Government Agency Type: State

Government Agency: Louisiana Department of Wildlife and Fisheries

General Comment

See attached file(s)

Attachments

LDWF Comments-Federal Register-Proposed Changes to Bald Eagle Incidental Take_rsm_11.28.22

JOHN BEL EDWARDS
GOVERNOR



JACK MONTOUSET
SECRETARY

PO BOX 98000 | BATON ROUGE LA | 70898

17 November 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

Dear Sir or Madam:

The Louisiana Department of Wildlife and Fisheries (hereafter, "Department") appreciates the opportunity to comment on revisions to regulations authorizing permits for incidental take of eagles and eagle nests proposed under docket FWS-HQ-MB-2020-0023. The Department understands that managing interactions and conflicts between nesting eagles and humans represents an administrative burden, and the Department supports efforts by the U.S. Fish and Wildlife Service (hereafter, "Service") to update and streamline the permitting process. Toward the goals of maintaining the current standard of eagle conservation and ensuring compatibility of incidental eagle take permitting with both federal and state management priorities, the Department offers the following comments.

The Department supports the Service's approach to authorizing Bald Eagle disturbance take under general permits for activities currently listed in the 2007 National Bald Eagle Management Guidelines (hereafter, "2007 Guidelines"). Within **§ 22.280: (b) Eligibility for a general permit for disturbance: (4) Alteration of vegetation**, the Department suggests (1) specifically including "controlled burning," along with mowing, timber operations, and forestry practices; and (2) that controlled burns should not be conducted within 660 feet of an in-use Bald Eagle nest or within 330 feet of any Bald Eagle nest.

The Service clarifies in the proposed rule that non-lethal methods to disperse eagles from a site (hazing) does not constitute disturbance and does not require a permit unless hazing occurs adjacent to an in-use nest and is sufficient to disrupt eagle breeding activity. As such, the Service recommends a buffer of 660 feet between hazing activities and in-use nests, yet it remains unclear under which circumstances a permit would be required for hazing. The Department suggests that the 660-foot buffer between hazing activities and in-use nests be required and that the rule clearly indicates that a permit is required for hazing activity within 660 feet of an in-use Bald Eagle nest and within 330 feet of any Bald Eagle nest. The 2007 Guidelines form the basis for much of the proposed eagle disturbance take permits. The Department recognizes the importance of the 2007 Guidelines and often refers to them when providing recommendations and guidance to industry and the general public in Louisiana. The Department thus recommends that the 2007 Guidelines be updated to reflect current standards and permitting, including information used by the Service to inform the proposed permitting revisions. The Department respectfully requests the opportunity to review revised guidelines if or when available.

Regarding take of eagle nests, the Department supports a mechanism to allow for nest take in certain situations, but questions the approach of issuing general permits in which the Service provides little to no oversight or review prior to issuance. As currently proposed, in the case of emergency, health and safety, and for nests located on human-engineered structures, review by the Service would not be required prior to issuance of most nest take permits. The Department is concerned that this approach would allow for an unacceptable lack of consideration of alternatives to nest removal and urges the Service to consider greater oversight in this process. The Department also questions the Service's decision to require no monitoring as a condition of a general permit and suggests that even a minimum level of monitoring (e.g., monitoring eagle activity in the first breeding season following nest take) may provide a mechanism to inform future nest take decisions. The Department further suggests that, in cases where nest take is allowed, the Service *require* that, when present, eggs or chicks must be fostered or taken to a federally permitted rehabilitator for care.

Finally, the Department emphasizes that the proposed rule offers little regarding coordination with the states. In Louisiana, and many other states, state biologists are the first point of contact for public citizens, landowners, and commercial and industry representatives with concerns, questions, or projects regarding eagle disturbance and potential take. However, the only mention of coordination with the states is that the Service may make general permit information available to states "that wish to know more about general permit activities occurring in their area," and that states "may contact the Service if they have concerns about compliance with permit terms at a particular project or new information that may bear on the conditions of the permit." The Department suggests that clear and direct communication with states regarding permits issued within their boundaries (e.g., notification of state-designated representatives of approval of general permits) would allow for a more streamlined approach to dealing with concerns and questions by the public and industry representatives and a more efficient use of state law enforcement resources.

Thank you for the opportunity to comment on the proposed rule. The Department appreciates the Service's work to improve the permitting process, increase customer satisfaction, and buy-in to the permit program, and, ultimately, ensure the protections afforded to eagles by the Bald and Golden Eagle Protection Act.

Should you have any further questions regarding Bald Eagles in Louisiana, please contact Nongame Ornithologist Rob Dobbs at 337-735-8675.

Sincerely,



Randell Myers
Assistant Secretary
Office of Wildlife
Louisiana Department of Wildlife and Fisheries

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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-2020-0023-6448

Comment from McCarthy, John

Submitter Information

Name: John McCarthy

General Comment

Dear U.S. Fish and Wildlife Service,

Driving home from a Thanksgiving gathering last week in southern Idaho, I saw a bald eagle flying over snow fields. Maybe it was coming from or going to Anderson Reservoir, as the great birds are attracted to water bodies in winter. Once again I commented, as a kid I never saw any eagles and now it's a periodic occurrence. And bald eagles are prevalent in America today because people and government took action.

More action is needed for eagles to meet current threats and conditions.

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.

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Sincerely,
John McCarthy

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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-2020-0023-7250

Comment from Omorobe, Thomas Junior

Submitter Information

Name: Thomas Junior Omorobe

Address:

Germantown, MD, 20874

Email: komeomorobe@gmail.com

Phone: 3017286822

General Comment

See attached file(s)

Attachments

THOMAS OMOROBE PCSP

Re: [FWS-HQ-MB-2020-0023-1903]

To Whom It May Concern,

I sincerely appreciate you for the opportunity to comment on Permits for Incidental Take of Eagles and Eagle Nests. I am Thomas Junior Omorobe, a second-year student at Montgomery College. I see myself as an environmentalist; I think it is my duty to speak on such matters.

My aim is to comment on the revisions to the regulations authorizing the issuance of permits for eagle incidental take and eagle nest take. I would like to express my support of these revisions and provide suggestions of my own. I will start by saying the importance of protecting these eagles and their nests should never be lost on us. According to Albert Manville of the United States' Department of Agriculture, 175 million birds are killed annually by power transmission lines. He adds that 40,000 or more birds die because of wind turbines yearly. These numbers are shocking and very disturbing. The USFWS revealed that there are about 316,700 bald eagles left in the lower 48 states. These numbers are quite worrying, and it is important that something be done quickly. Permits should be made mandatory for all activities that could disturb the breeding of bald eagles. I am glad that the USFWS is interested in the conservation of the eagles. Protecting the eagles should remain a priority because they are very important. They play a very crucial role in our ecosystem; they are top predators and affect the population of organisms in their food chain. They also aid the clean up process of nature by eating dead animal matter.

I will once again like to appreciate you for this great opportunity. I hope permits are made necessary for the incidental take of eagles because they could become extinct and that would have negative effects as they perform an important role in our ecosystem.

Sincerely,

Thomas Omorobe.

SOURCES CITED

Bald Eagle. U.S Fish and wildlife service.

Manville II, Albert M. 2005. Bird strike and electrocutions at power lines, communication towers, and wind turbines: state of the art and state of the science - next steps toward mitigation.
In: Ralph, C. John; Rich, Terrell D., editors 2005. Bird Conservation Implementation and Integration in the Americas: Proceedings of the Third International Partners in Flight Conference. 2002 March 20-24; Asilomar, California, Volume 2 Gen. Tech. Rep. PSW-GTR-191.
Albany, CA: U.S. Dept. of Agriculture, Forest Service, Pacific Southwest Research Station: p.

1051-1064

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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-2020-0023-7270

Comment from Peters, Cassy

Submitter Information

Name: Cassy Peters

Address:

Rochester, NY, 14609

General Comment

Given the new threats imposed by ever increasing modern technologies, please draft regulations that will better protect these majestic birds that are so intrinsically entwined with the bird and overall natural ecology, as well as with our national heritage.

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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-2020-0023-7274

Comment from North American Falconers Assoc. and International Eagle Austringers Assoc.

Submitter Information

Name: Martin Geleynse

Email: mjbarker53@hotmail.com

Organization: North American Falconers Assoc. and International Eagle Austringers Assoc.

General Comment

Dear Assistant Director Jerome Ford and Dr. Eric Kershner - Please see the attached comments from the North American Falconers Association and the International Eagle Austringers Association. We appreciate this opportunity.

Attachments

2022 FWS Incidental Eagle Take Letter_Signed



November 28, 2022

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

Re: Proposed Rule for Permits for Incidental Take of Eagles and Eagle Nests

Dear Assistant Director Jerome Ford:

We thank the US Fish and Wildlife Service (hereby “Service”) for continuing to work with many stakeholders to conserve golden eagles across the United States. The International Eagle Austringer’s Association and the North American Falconers Association members are committed to protecting eagle populations as well as the [cultural heritage](#) of falconry with golden eagles. Eagle falconry dates back more than 4000 years and is still practiced by falconers on six continents. We appreciate your consideration of the following comments:

Exploring Captive Breeding and Hacking as a Mitigation Strategy

As pointed out by the Service, golden eagle numbers have been relatively stable the last several years, but there is concern for potential decline in the future across the U.S. The golden eagle has never been listed by the Service as either a threatened or endangered species. There is no anticipation or current projection by federal agencies that the golden eagle will be listed as a threatened, endangered, or candidate species. However, many anthropogenic and natural effects such as various types of collisions, poisoning, shooting, electrocution, nest disturbance, prey decline, and habitat loss pose a threat to golden eagles. Golden eagle breeding pairs produce few offspring each year. Recovery from any future decline will likely take significant time and resources from numerous groups and agencies.

Presently, a handful of Native American eagle aviaries and zoos have bred golden eagles in the United States starting in the early 70’s at the Topeka Kansas Zoo, followed by a very small group of others. We understand golden eagle propagation is currently limited to the American Eagle Foundation facility at Dollywood and at the Comanche Nation Sia Center. Historically, a very small number of these young eagles were given to falconers and more recently, some of the young golden eagles have been released to the wild. There remains a significant knowledge gap

concerning the survival rate of captive bred golden eagles hacked into the wild. Experience has shown this can be an effective strategy to address population decline in raptors.

We urge the Service to consider allowing captive breeding of golden eagles. Initially, this could be done by a small group of experienced raptor breeders to support research into the efficacy of releasing captive golden eagles into the wild. Some of these eagles could be used for falconry purposes. By getting a start on this now, the technical expertise for such a recovery effort, if needed, could already be understood should the need arise. In previous similar efforts, captive falconry peregrines were instrumental in the recovery of the peregrine falcon in the United States. Captive breeding and hacking studies need to be conducted now to ascertain the best methods for captive breeding and hacking golden eagles into the wild. We believe this could eventually be used as a compensatory technique for incidental take of golden eagles, as well as augment the very small number of wild golden eagles being removed in livestock depredation areas.

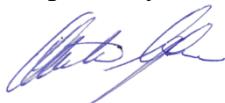
Falconry Techniques as a Mitigation Strategy for Rehabilitated Golden Eagles

Data from an ever-increasing number of golden eagles with GPS/GSM transmitters is beginning to show that eagles exercised and conditioned by falconers before release have a higher chance of survival in the wild when compared to eagles released from rehabilitation without such conditioning. Over the last several decades, falconers have assisted raptor rehabilitation by conditioning and hunting with such eagles prior to release back into the wild.

We believe eagles rehabilitated using falconry techniques could provide another strategy to mitigate the loss of eagles incidentally taken from the wild through fatal and non-fatal sources such as turbine collision, electrocution, etc. Successful golden eagle rehabilitation by falconers could also be used to justify removal of additional golden eagles from depredation areas. The average survival for the rehabilitated eagles could be determined using various GPS transmitters and Motus tags. Energy production and distribution companies as well as falconers could then receive credit for mitigation by successfully rehabilitating eagles back into the wild. This provides a win-win scenario for the Service, energy industry, woolgrowers, falconers, and most importantly, golden eagles.

Thank you for providing this opportunity to comment. We look forward to working with the Service on these recommendations.

Respectfully,



Martin Geleyne, [North American Falconers Association](#), President



Mike Barker, [International Eagle Austringers Association](#), Chairman

PUBLIC SUBMISSION

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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-2020-0023-7466

Comment from Prairie Island Indian Community

Submitter Information

Email: Nicci.lehto@piic.org

Government Agency Type: Tribal

Government Agency: Prairie Island Indian Community

General Comment

November 29, 2022

Comments Regarding the Advance Notice of Proposed Rulemaking Regarding the Eagle Incidental Take Permitting Program

Submitted by:

The Prairie Island Indian Community

Filed electronically to the attention of:

Public Comments Processing

Attn: FWS-HQ-MB-2020-0023

U.S. Fish and Wildlife Service

MS: PRB/3W

5275 Leesburg Pike

Falls Church, VA 22041-3803

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

Attachments

Final Draft Comment Letter FWS Eagle Rule Changes 11212022 - SIGNED

Johnny Johnson
President

Valentina Mgeni
Secretary



Shelley Buck
Vice President

Michael Childs Jr.
Treasurer

Cody Whitebear
Assistant Secretary/Treasurer

November 15, 2022

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

Submitted via
<http://www.regulations.gov>

Re: *Docket No. FWS-HQ-MB-2020-0023, Permits for Take of Eagle Nests*

Dear Assistant Secretary Estenoz:

The Prairie Island Indian Community (“Tribe”) submits the following comments in response to the United States Fish and Wildlife Service’s (“Service” or “USFWS”) request for comments on proposed rule changes of Docket No. FWS-HQ-MB-2020-0023, Permits for Incidental Take of Eagles and Eagle Nests on September 30, 2022.

The Prairie Island Indian Community is a federally recognized sovereign Indian tribe located at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota. Our tribal members are Mdewakanton, or “those who were born of the waters,” and have lived on Prairie Island for countless generations. Our land is sacred to our people and home to many sacred Wanbdi, or eagles. Wanbdi is culturally significant to Dakota Communities as a relative, an older brother, and a direct link to ancestors and to the Creator, which is why we respect and protect the eagle through strong partnerships, like the National Eagle Center.

The proposed rulemaking intends to develop a program of general permits for energy infrastructure. However, the Tribe is concerned that the USFWS has expanded the scope to include eagle nest removal and disturbance, and significantly diminished important protections. We also are deeply concerned about specific permits for nest removal. Below, we briefly address the removed protections from current regulations and analyze those changes in the context of a pending application for nest removal on the border of our Reservation.

Cultural Significance of Local Eagle Population

Under current nest removal regulations at 22.85(d)(6), the USFWS must evaluate the “cultural significance of a local eagle population.” This evaluation is important to the Tribe, as eagles are one of the foremost sacred brothers to our people. We also live along the Mississippi River, a stronghold of nesting eagles in the nation, with some of the most severe pollutant issues. We have collaborated with the National Park Service and Audubon, monitoring eagle nesting populations, as well as investigated contaminant bioaccumulation. Under the proposed regulations, the cultural significance of local eagle populations no longer is a consideration.

Finding of No Practicable Alternative

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

Net Benefit to Eagles and Compensatory Mitigation

Under current regulations at 22.85(e)(2)(iii), the USFWS must find that “the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.” If the activity does not have a net benefit, the applicant must provide compensatory mitigation related to the level of take and the activities purpose, scope, and scale. Under the proposed regulation, the USFWS no longer would make a finding of net benefit; instead, an applicant would solely provide that information. Compensatory mitigation is required only when the take exceeds the limit of the applicable EMU. In our area, the local Service office could issue 60 permits annually for nest removal, with no benefits to eagles. This would lead to rapid decline of eagle populations.

Nesting and Foraging Habitat

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

Native American Tribal Religious Use

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

General Permits for Nest Disturbance

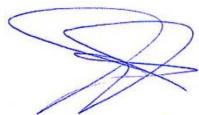
The proposed rule would establish automatic general permits for nest disturbance in eight categories, including construction, timber operations, and blasting. The rule has no minimum distance where a general permit is not available; an applicant would receive an automatic permit to start construction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

On November 15, 2021, during the White House Tribal Nations Summit, President Biden announced that 17 federal agencies have formally committed to protecting Tribal treaty rights in the Memorandum of Understanding (“MOU”) Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights. The MOU is intended “to enhance interagency coordination and collaboration to protect such treaty and reserved rights and to fully implement federal government treaty obligations.” As Department of Interior Secretary Deb Haaland said at last year’s Summit, “It is our obligation to honor these treaty rights and incorporate Tribal interests into our decision-making, so that tribal rights regarding everything from hunting and fishing to health care and education are protected.” For this reason, we believe that evaluation of impacts to tribal lands and treaty resources should be included in any revised regulations. Unfortunately, the proposed rule removes all reference to tribal rights and interests as it pertains to eagle protection in favor of industry special interests.

Finally, unlike other tribal nations that have ceded territory, Dakota tribes lost all treaty rights, which have never been reinstated. That leaves Dakota tribes, like the Prairie Island Indian Community, less equipped to facilitate protection of their sacred brother, the eagle, across historic Dakota territories, except for the small amount of trust lands that had to be bought back for the Tribe’s benefit. The USFWS support of these rule changes, which endangers the protection of eagles, is antithetic of what the Service should stand for. The Tribe recommends that USFWS retain protections for eagles that safeguard nesting, as well as the recognition of Tribal culture; rather than sway in the organization’s ideals in order to benefit large-scale development interests, which have historically threatened our natural resources in times past. The return of the once highly endangered eagle is one of the most important successes of the Endangered Species Act; rescinding on these protections threatens to undo that great success. Additionally, understanding, recognizing, and supporting the cultural interest of the First Nations should be of paramount importance to the U.S. government.

Thank you for your time and consideration of our feedback. We urge the USFWS to consider the cultural, environmental, and religious impact these rule changes will have on our Tribe and other sovereign nations. We look forward to continued discussions with the USFWS on the proposed policy changes within Docket No. FWS-HQ-MB-2020-0023 and the effects on our people and our sacred wambdi (eagle).

Wopida (Thank you),

A handwritten signature in blue ink, appearing to read "JOHNNY JOHNSON".

Johnny Johnson
Tribal Council President

PUBLIC SUBMISSION

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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-2020-0023-7469

Comment from Rauch, Cate

Submitter Information

Name: Cate Rauch

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.

It is vitally important that we ensure the safety of our wildlife as we move forward with sustainable energy sources. We must ensure that strong legal protections are in place for not only our eagle populations but all wildlife in order to rebuild and maintain a healthy planet for all life.

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,
Cate Rauch

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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-2020-0023-7951

Comment from Schilling, T

Submitter Information

Name: T Schilling

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. Do we need to cause more species to go extinct through our careless pursuit of profit with no regard for our fragile environment? The answer must be NO!

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.

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- 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,
T Schilling

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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-2020-0023-8353

Comment from Spates, Georgeanne

Submitter Information

Name: Georgeanne Spates

General Comment

Dear U.S. Fish and Wildlife Service,

I am a retired New York State wildlife refuge manager who has witnessed an extreme downward trend of eagle populations mainly caused by toxic chemicals like DDT. Bald Eagles only recently are recovering. Let us not allow renewed threats.

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 NOT DECLINE AGAIN.

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.

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Sincerely,
Georgeanne Spates

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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-2020-0023-8375

Comment from South Carolina Department of Natural Resources

Submitter Information

Email: dillmanj@dnr.sc.gov

Government Agency Type: State

Government Agency: South Carolina Department of Natural Resources

General Comment

See attached file(s)

Attachments

20221128_Proposed_Rule_Eagle_Comments_SCDNR_signed



South Carolina Department of Natural Resources

Robert H. Boyles, Jr.
Director

Emily C. Cope
Deputy Director for Wildlife and Freshwater Fisheries

U.S. Fish and Wildlife Service
Attn: FWS-HQ-MB-2020-0023
5275 Leesburg Pike
Falls Church, VA 22041-3803

electronic submission

RE: Permits for Incidental Take of Eagles and Eagle Nests
Docket Number: FWS-HQ-MB-2020-023

To Whom It May Concern,

The South Carolina Department of Natural Resources (SCDNR) is the state agency charged by state law with the management, protection, and enhancement of wildlife, fisheries, and marine resources in South Carolina. The SCDNR's mission is to serve as the principal advocate for and steward of South Carolina's natural resources (SCDNR authorities and responsibilities are described in Titles 48, 49 and 50, South Carolina Code of Laws (1976), as amended). In response to the US Fish and Wildlife Service's (USFWS) proposed rule on permitting for incidental take of eagles and eagle nests, the SCDNR would like to provide the following comments.

Preferred Alternative

The SCDNR concurs that the proposed action and the preferred Alternative, Alternative 4, is the most suitable option to increase industry participation in the permitting process, as well as the adoption of conservation practices likely to minimize take of eagles.

General Permits

Take limitations

The Bald eagle is currently listed as state threatened in South Carolina. The proposed rule calculates take limitations at Eagle Management Units (EMUs), which are larger than state boundaries, and indicates that compensatory mitigation resulting from authorized take within EMUs will be correlated with local area population (LAP) thresholds. The SCDNR recommends that the proposed rule provides details concerning the coordination between the Service and the states with respect to the distribution of authorized take across individual EMUs, as well as in relation to the science-based quantification of LAP thresholds to help guarantee the authorized take is sustainable at the state level.

Evaluation of low effects

The proposed rule states that general permits will be issued for activities that result in consistent and low effects on eagle mortality. The USFWS should periodically reassess the determination of low effects. The SCDNR requests that the rule provides information on how low effects will be reassessed with specific criteria and timeframes.

Table 1 Relative abundance thresholds for wind energy

Live Life Outdoors

The abundance thresholds listed in Table 1 do not accurately represent when eagles are most abundant in South Carolina. Bald eagles can begin to breed in November in South Carolina. The SCDNR supports the seasonal aspect of the relative abundance thresholds, but to get more accurate abundance estimates the USFWS should incorporate north/south Bald eagle and east/west Golden eagle geographic gradients.

Nest disturbance rules

Certain land management activities improve habitat near eagle nesting areas and therefore create a net benefit to eagles. Some of these land management activities include prescribed fire, mowing, disking, and herbicide treatments. These activities represent a low risk of take when done appropriately. However, many of these activities need to be conducted during a specific time of year in order to successfully restore and maintain the ecosystems. Therefore, planning to avoid the eagle nesting season may not be an option. The SCDNR requests that general permits for land management activities have minimal avoidance, minimization, and monitoring requirements and no compensatory mitigation.

Program Management

USFWS and state agency coordination

The SCDNR requests that the USFWS should work closely with states during the permitting process to ensure that state agency roles, responsibilities, and regulatory limitations are considered, whether it is regarding general or specific permitting, development of permitting procedures and monitoring guidance, or assessment of relative risk to eagles from permitted activities.

The SCDNR also requests that the USFWS notify state agency points-of-contact regarding issued permits of both tiers following a mutually agreed upon format and consistent schedule. It would also be helpful to allow state wildlife agencies to obtain the permit monitoring reports, ideally through a website or some other data portal, to reduce direct requests to USFWS staff and delay of receipt of information.

Permittee monitoring

Monitoring sites for injured and dead eagles once every three months for wind facilities, and opportunistically as part of regular duties for power lines, is inadequate. Detecting remains becomes more challenging as more time passes due to the scavenging of remains and decomposition. Additionally, inconsistent monitoring will make it difficult for USFWS to evaluate claims that a cause other than a collision or electrocution was responsible for an eagle death given the state of the remains.

The SCDNR recommends dedicated monitoring, either by well trained staff or qualified third-party contractors. Third-party contractors conducting monitoring have been able to defend compliance complaints received from the public on projects. The USFWS should provide online training for monitoring that includes minimum qualifications of those conducting the monitoring; the frequency of monitoring and time spent at each site; recommendations of transect size; ideal time of day; and reporting requirements.

USFWS monitoring

The USFWS should provide more information on how they will complete program-wide monitoring and how monitoring events at project sites will inform permittee compliance. Additional information needed includes the percentage of sites to be monitored, how often each site will be monitored, and how discrepancies between USFWS fatality monitoring and permittee-reporting will be handled. Similar

methods should be provided for permittees for self-monitoring. These details should be included in the proposed rule for evaluation, as this type of program-wide feedback will be the main method the USFWS uses to decide if the program is compatible with the preservation of eagles and to evaluate impacts.

USFWS auditing

The USFWS should clarify what percentage of general permits they will audit and how they will select which permits will undergo an audit. Long-term, a minimum of 15-20% of permits should be audited annually, but in the first few years nearly all general permits should be audited to help guarantee applicants understand the general permitting system. Audited permits should represent all types of general permits and EMUs. Based on the results of the audits, the USFWS should work to identify common compliance issues that occur and provide outreach materials to address these issues in the form of webinars, FAQs, or other outreach methods to improve understanding of the general permit system.

Mitigation process and use of mitigation funds received by USFWS

The proposed rule should more clearly state how the suitable mitigation will be assessed and how the fees will be collected and utilized. The SCDNR does not support omitting the requirement for compensatory mitigation in situations where a permittee's actions result in the take of an eagle nest.

The SCDNR requests that consideration be given to states who would like to be consulted and a part of the process for determining appropriate mitigation for projects within their jurisdiction and determining how collected fees will be expended on behalf of eagle conservation. The SCDNR would very much like to work collaboratively with the USFWS on eagle conservation and mitigation efforts in South Carolina where take occurs.

In-use Nest Definition

The proposed rule defines an in-use nest as a nest containing at least one viable egg or dependent young; however, it can be difficult to determine whether an egg is viable during certain parts of the breeding season. The USFWS should clarify how egg viability should be determined. Additionally, the current National Bald Eagle Management Guidelines consider nests that are being maintained at the beginning of the breeding season in preparation for breeding as in-use nests. The SCDNR prefers and recommends those nests should still be considered in-use; if those nests are taken, it could potentially prevent those eagle pairs from contributing offspring to their LAP for that breeding season.

Thank you for the opportunity to participate and provide comments for the proposed rule on permitting for incidental take eagles and eagle nests. The SCDNR looks forward to continued coordination with the USFWS on conservation efforts to protect bald and golden eagles.

Sincerely,



Billy Dukes
Chief of Wildlife
SCDNR

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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-2020-0023-9019

Comment from whitt, david

Submitter Information

Name: david whitt

Address:

lewiston, NY, 14092

Email: davidwhitt803@gmail.com

Phone: 716-754-2133

General Comment

As a conservationist and environmentalist for decades I am shocked that the USFW is considering weakening the third-party oversight of wind energy permits. This is a step backwards on decades of wildlife protection for unproven and perhaps short-term energy projects. The long-term usefulness of these wind projects and their scalable usefulness are yet to be proven. We may well be buying "edsels" here; we simply do not know. However, we have decades of bad experiences with long-term wildlife suffering on the record. This is simply getting the cart before the horse in energy solutions while ignoring the probable bad effects.

David Whitt
davidwhitt803@gmail.com

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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-2020-0023-9023

Comment from Wiegand, Jim

Submitter Information

Name: Jim Wiegand

Address:

Lakehead, CA, 96051

Email: jim@jimwiegand.com

General Comment

Comments from Wildlife Biologist and eagle expert Jim Wiegand

Attachments

comments USFWS Nov 2022

Docket (FWS-HQ-MB-2020-0023) / Document



Permits for Incidental Take of Eagles and Eagle Nests

Posted by the Fish and Wildlife Service on Sep 29, 2022

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Document ID

FWS-HQ-MB-2020-0023-1903

Content

A call for science and accountability submitted November 29, 2022

America's green energy fraud has been going on for decades and as I have discovered, when tax dollars can be stolen, the DC corruption never sleeps.

New DC laws are being proposed that will give one of this world's most destructive industries, even less oversight and accountability than they already have. An industry that will continue to slaughter off millions, upon millions of protected birds, bats and raptors annually.

The last thing America needs is less oversight of the USFWS and the wind industry. Yet here we are, with new regulations being proposed by our corrupt USFWS. They now even want to destroy active and alternate nests, in eagle nesting territories near wind farms before turbines slaughter off the parents and sub-adults.

Without non-biased third-party monitoring, it's just the USFWS and the wind industry working behind our backs. This secret partnership has already hidden (1980-2022) approximately 2 billion bird and bat fatalities, which includes over a million raptors.

How do I know? I know what Science is and I've read over the contrived research put out by this industry and the Interior Department. Then I made credible adjustments for their many fatal flaws.

It's obvious both entities are working together because they've both produced incredibly fraudulent research. In addition, the USFWS has given the wind industry voluntary regulations

that require no science and the USFWS has been producing highly embellished eagle population statistics. Working together, both are hiding the wind industry's ongoing species annihilation.

With contrived modeling and a complete abandonment of reality, the USFWS claims there is a population of 316,708 bald eagles in the lower 48 states. A claim with an average of 6600 bald eagles are living in every state, when not one of our lower 48 states has 6600 eagles. California has one of America's the largest bald eagle populations, with a population of less than 2000 bald eagles.

The USFWS has helped to hide the origin of over 66,000 eagle carcasses shipped to the Denver Repository and has also avoided any credible research that would shed light on this industry's horrific impact to species.



Since 1995 over 66,000 eagle carcasses have been secretly shipped off to the Denver Eagle Repository. About 3000 are shipped each year and their origin remains a green secret. Most collected come from wind farms.

I wonder if Maureen D. Foster, Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks or Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service are even aware of the network of dirtbags secretly shipping eagle carcasses to the Denver eagle repository from wind farms. If not, I will expect to hear back from them.

Here in Shasta County, CA, we easily have the highest density of bald eagles in the state and the total population including juveniles and sub-adults is about 150. Except for occasional migrants, many of California's 58 counties don't even have Bald eagles.

Below are CA Fish and Game numbers 2016. They report about 300 hundred bald eagles living in CA. Add the sub-adults and you might get another 150-200. Yet the Interior Department's numbers suggest that the Bald Eagle Population has grown by 10-20 times in size since 2016. But as I know, claiming a population of nearly 317,000 bald eagles is a calculated fraud.



Bald Eagle Breeding Territory Data for California, 1990-2016				
Year	No. of Known Territories	No. of Territories Surveyed	No. of Territories Occupied	No. of Young Produced
1990	107	102	94	95
1991	111	105	90	92
1992	120	110	99	82
1993	127	116	102	103
1994	142	129	116	120
1995	146	129	105	89
1996	160	144	124	128
1997	171	160	142	140
1998	180	168	148	125
1999	188	180	151	138
2000	202	159	128	120
2001	211	147	128	116
2002	230	174	149	135
2003	252	199	175	150
2004	260	150	136	141
2005	265	117	111	96
2006	280	146	134	105
2007	296	164	147	69
2008	304	118	111	52
2009	310	121	105	48
2010	323	118	105	58
2011	337	121	112	103
2012	352	164	137	124
2013	355	97	89	85
2014	357	87	77	75
2015	366	99	90	87
2016	375	113	106	80

The Interior Department loves to use statistics and contrived modeling in their nonscientific research, so here is another statistic I have for them. There is a 100% probability that their latest bald eagle population numbers are fraudulent. There is also a 100% probability that the golden

eagle in California due to wind turbine fatalities, is an endangered species. A fact also being hidden with collusion and corruption.

Of course, we would actually have more many bald eagles in CA if the wind industry wasn't killing them off in the delta region near the Altamont and Solano County wind farms. The habitat is there and they've tried to establish nesting territories, but eagles trying to establish nesting territories are always killed off by turbines.

This history of nesting failures located near wind turbines is never clearly stated, but the evidence is there for anyone that wishes to read about it. But industry documents do their best to omit, hide or to not document these kinds of facts. Bald eagles are scavengers and once they discover that carcasses of other birds are falling to the ground around these turbines, they will be attracted by these carcasses and will also be killed. This is most likely to have happened to a pair of bald eagles that set up a home on Grizzly Island near the Shiloh wind turbines in 2011. This was sort of mentioned in Wind industry documents but reality was avoided.

Near the Hatchet Ridge wind Project in Shasta County are at least two abandoned Bald Eagle territories, with their nests falling apart. They were falsely claimed to have been occupied in the Fountain Wind EIR. None of the government wildlife agencies said a word, even though they were occupied before the wind farm became operational.



Nest 299, located approximately 2.9 miles east of the Fountain Wind Project.

“During eagle nest surveys conducted within a 10-mi radius of the Project area, 11 occupied bald eagle nests were documented, with the closest nests to the Project area located at Lake Margaret, approximately 4.7 km (2.9 mi) east of the Project, and along the Pit River approximately 6.8 km (4.2 mi) north of the Project.”

This abandoned nest is located about 1 1/2 miles from the Hatchet Ridge turbines.

At Altamont recently.....“No active golden eagle nests were documented during the 2020 raptor nest surveys conducted by ICF within the project site. **However, U.S. Geological Survey (USGS) found an active golden eagle nest on the project site in 2020, which subsequently was determined to have failed during a follow-up survey in June 2020.**”

All this illustrates the hidden legacy of wind farms. Empty regional skies around wind farms and empty habitat that keeps on attracting migrants that also get killed.

Complicating this hidden carnage to eagles and other species from wind energy, wind farm leaseholders are required to immediately pick up wind turbine carcasses off their properties.

Then they are required to dispose of them by burning, burying them deeply, cooking them, and adequately composting them. If leaseholders disclose any of this to the public, they will be crucified from the nondisclosure conditions in their green energy contracts.

An honest and non-colluding USFWS could stop this fraud in a heartbeat

6.2.5 Disposal of Animal Carcasses. Owner agrees to take all reasonable measures to avoid attracting scavenging birds and other animals by ensuring all animal carcasses on the Property are immediately (to the extent permitted by applicable law) burned, buried, adequately and completely composted by covering with an adequate amount of earth or mulch, cooked or placed in enclosed containers with lids if such carcasses will be removed at a later time from the Property. Animal carcasses shall not be left in open fields or adjacent to buildings and shall not be left uncovered or exposed.

The wind industry in collusion with the Interior Department secretly ships thousands of eagles every year to the Denver Eagle Repository. The origin of these eagles is never disclosed but I know most of these eagles are coming in from wind farms where employees regularly search around the turbines for carcasses that are then put in freezers. America's Federal Take permit system is a complete fraud on the public because the USFWS secretly ships eagle carcasses from wind farms and nobody is required to disclose any of these clandestine activities to the public.

How did eagle carcass numbers jump from 800-900 in 1997 to over 3000 per year? Windmills being placed in eagle habitat all over America.

U.S. Fish & Wildlife Service

Fish & Wildlife News

November 1997

About 95 percent of orders received at the repository are for whole eagles, with an average of about 1,000 people applying for the 800 to 900 available birds each year. Requests are filled on a first-come, first-serve basis by date of application.

Eagles turned in to the repository typically have died of natural causes or fatal encounters with power lines, windmills, vehicles, or illegal shooters or trappers. The repository does not accept poisoned birds because of the hazard they pose to human health.

The typical dead eagle stays only three to five days at the repository before it is shipped out to the next applicant on the list.

1997 vs. 2021

80 times more in 2021



U.S. Wind Turbine Database

Database Release: July, 2021

Data Source: LBNL, USGS, ACP

Map Interface: USGS, Energy Program

The USWTDB provides onshore & offshore wind turbine locations in the United States, corresponding facility information, and turbine technical specifications. [Watch our tutorial video](#).

The USWTDB contains **69,166 turbines** with a total rated capacity of **124,550 MW**

In 1997, wind power generation capacity of 1,579 MW produced 3,254,117 megawatthours (MWh) of electricity.³ More than 99 percent of generation was by independent power producers, and nearly all of it was located in California. During 1998 and 1999, wind farm activity expanded into other States, motivated in part by financial and regulatory incentives and, in the case of Iowa and Minnesota, State mandates. Iowa, Minnesota, and Texas each had capacity additions exceeding 100 MW that came on line in 1999 (Table 1). During 1999, wind farm capacity that came on line consisted of state-of-the-art wind turbines manufactured primarily by

All so corrupt and so disgusting

The current population numbers are fake and were set up with back-room negotiations. Then using contrived methodologies, new Interior Department studies were rigged to produce data that would fit into this industry's green web of lies. In the lower 48 states there are not even 25% of the 316,708 bald eagles being reported by the USFS and yet the USFWS has currently allocated an annual take of 19,623 bald eagles.

Then there is the silence or lying by omission from Conservation groups and others, accepting blood money from this industry and all being handcuffed with nondisclosure agreements.

With honest research and accountability, many fake experts would be in prison and developers/leaseholders would be fined billions for their hidden ongoing slaughter to species.

Universities would be teaching students the truth about wind turbine impacts and the public would know how little net energy wind turbines are producing for America.

With accountability the annual harvest limit of bald eagles would be reduced to zero until credible population research was produced. With honest research and accountability, the Wind industry would not be able to hide their annual slaughter of America's eagles as they have for decades.

But sadly, staggering layers of fraud, collusion and rigging are protecting green profits and keeping all this hidden. This is a DC problem with both Republicans and Democrats in on this fraud.

I would love to be part of a Congressional wind industry hearing, that allows me to ask our sellout experts, scientific questions.

Jim Wiegand
Lakehead, CA

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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-2020-0023-9140

Comment from Wireless Infrastructure Association (WIA)

Submitter Information

Email: stephen.keegan@wia.org

Organization: Wireless Infrastructure Association (WIA)

General Comment

Please find the comments of the Wireless Infrastructure Association (WIA), attached.

Attachments

FINAL_WIA Comments in FWS Proposed Rule for Incidental take of Eagles and Nests

**Before the
U.S. DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE
Falls Church, VA 22041**

In the Matter of)
)
)
)
)
 Permits for Incidental Take of Eagles and Eagle) Docket No. FWS-HQ-MB-2020-0023
 Nests)
)
)
)

COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

I. INTRODUCTION

The Wireless Infrastructure Association (“WIA”)¹ appreciates the opportunity to comment in response to the United States Department of the Interior, Fish and Wildlife Services’ (“FWS” or “Service”) Proposed Rule that seeks to revise and streamline its rules for incidental take of eagles and their nests (“*Proposed Rule*”).² WIA submits the following comments on the Proposed Rule in regards to the proposed general permits and to the extent that wireless infrastructure activity would be covered by the Proposed Rule.

First, WIA applauds the Service for recognizing when regulations are not facilitating their intended results and for working to remove these obstacles.³ In removing confusing and ineffective requirements, the FWS can ensure effective measures are consistently employed to protect golden and bald eagles without placing onerous requirements on industry and the Service.

¹ WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. Its members include infrastructure providers, telecommunications carriers, and professional services firms.

² Permits for Incidental Take of Eagles and Eagle Nest, 87 Fed. Reg. 189, at 59598-59631 (Sept. 20, 2022) [hereinafter “*Proposed Rule*”].

³ *Id.* at 59599.

WIA supports the Proposed Rule which provides for general permits for incidental take of eagles and their nests for certain qualified activities.⁴ WIA believes that this streamlined approach will encourage maximum participation in the program while ensuring requirements are tailored to effectively preserving eagle populations. However, in crafting requirements for general permits, WIA cautions against overly prescriptive requirements which may result in the same inefficiencies this rulemaking seeks to address.⁵

II. THE PROPOSED RULE PROVIDES A WORKABLE FRAMEWORK WHICH BALANCES EAGLE PRESERVATION AND ECONOMIC ACTIVITY.

WIA generally supports the Proposed Rule and its efforts to streamline the process in order to maximize the effectiveness of the program. Implementing a general permit will reduce the administrative burden on both regulators and industry, providing a more efficient compliance environment. Further, removing requirements that have proved to be overly burdensome or ineffective, such as third-party monitoring and reviews at varying times,⁶ will allow more individuals to participate in the program and increase its effectiveness.

The general permit structure in the Proposed Rule provides a predictable compliance regime that will be broadly applicable to most interactions with protected eagles.⁷ This generalized approach will reduce the burden on industry to apply for permits, and the burden on the Service to process these applications.⁸ This approach should help free up FWS resources to allow for faster processing of specific permits that may be needed where general permits do not apply. Further, general permits that are standardized across the Service will make participation

⁴ See generally Proposed Rule.

⁵ See Proposed Rule at 59602.

⁶ See *id.* at 59601 (noting overlapping regulations creating a complex and potentially confusing regulatory environment).

⁷ *Id.* at 59607 (noting two thirds of applications are for incidental disturbances most of which will be eligible for general permits under the new rule).

⁸ *Id.* at 59607.

more accessible and predictable. Overall, WIA believes the Proposed Rule will create a more efficient and effective conservation program that appropriately balances protecting species with burdens on industry.

WIA further supports the FWS removing unworkable or ineffective requirements currently provided for in its rules. The Proposed Rule lays out several requirements that the FWS has identified as ineffective.⁹ Specifically, requirements of third-party monitoring and process reviews no less than every five years, have proven to be ineffective and are ripe to be streamlined. Further, modifications to definitions which highlight the focus of conservation on viable habitats will reduce unnecessary burdens on industry to monitor and preserve locations which are unused by birds.¹⁰ WIA supports these initiatives and encourages agencies across the Interior Department to continue to critically evaluate its requirements and remove those that are presenting unnecessary barriers.

While WIA is generally supportive of the general permitting structure, WIA encourages the FWS to be cautious of the burden additional avoidance and minimization conditions may present to industry. These rules should be flexible enough to ensure the broad participation the Proposed Rule contemplates. The Proposed Rule suggests that two of the conditions that could be imposed include to “[o]bstruct nest(s) or nest substrate” and “[m]inimize renesting that would cause the same emergency, safety, or functional hazard.”¹¹ There are currently no deterrents that effectively discourage eagles from nesting/re-nesting on communications structures. Additionally, the use of these deterrents on a site could pose safety risks to the eagles (i.e., risk of entanglement) and to tower climbers who must be able to easily access equipment without

⁹ *Id.* at 59601.

¹⁰ *Id.* at 59609.

¹¹ *Id.* at 59631.

obstruction. These requirements would increase the burden on the industry, offsetting the benefits of the improved permit structure, without providing a clear benefit for eagles. As the FWS is considering the practicability of avoidance and minimization conditions, WIA cautions against burdensome requirements which could lead to the same inefficiencies occurring from the new rule as were created by prior regulations.

III. CONCLUSION

For the foregoing reasons, WIA largely supports the FWS Proposed Rule and its general permits for eagle takes. The Proposed Rule lays out a workable framework that ensures broad participation in the program. However, WIA also cautions against overly burdensome requirements that could bring inefficiencies back into the program. WIA appreciates the opportunity to provide the views of the wireless infrastructure industry and stands ready to provide additional information as needed.

Respectfully Submitted,

/s/ Stephen Keegan
Stephen Keegan
Counsel, Government Affairs

WIA – The Wireless Infrastructure Association
2111 Wilson Blvd., Suite 210
Arlington, VA 22201
(703) 621-0525

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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-2020-0023-9239

Comment from Wyoming Game and Fish Department

Submitter Information

Email: wgfd.hpp@wyo.gov

Government Agency Type: State

Government Agency: Wyoming Game and Fish Department

General Comment

Please see attached letter for WGFD comments.

Attachments

wer9450.07_Signed Letter



WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82006

Phone: (307) 777-4600 Fax: (307) 777-4699

wgfd.wyo.gov

GOVERNOR
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November 29, 2022

WER 9450.07

U.S. Fish and Wildlife Service

Permits for Incidental Take of Eagles and Eagle Nests

FWS-HQ-MB-2020-0023

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

Dear Sir/Madam,

The Wyoming Game and Fish Department (Department) has reviewed the proposed revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take. The Department is statutorily charged with managing and protecting all Wyoming wildlife (W.S. 23-1-103). Pursuant to our mission, we offer the following comments for your consideration.

The proposed revisions to regulated eagle take include the following four categories:

- Changes to requirements at wind energy facilities including creation of a general permit in geographic locations with perceived lower eagle risk.
- Creation of a general permit for power line-related incidental eagle take.
- Creation of a general permit for bald eagle disturbance take.
- Creation of a general permit for bald eagle nest take.

The stated goals of the proposed rules are to increase the efficiency and effectiveness of the permitting process, facilitate and improve compliance, and ultimately to increase the conservation benefit for bald and golden eagles. Through these changes, the U.S. Fish and Wildlife Service (Service) will maintain adherence to the preservation standard, which requires stable or increasing populations of bald and golden eagles.

Bald and golden eagles are designated as Species of Greatest Conservation Need (SGCN) in Wyoming. Bald eagles were designated as SGCN due to the historic population decline and subsequent long-term recovery. The 2017 Wyoming State Wildlife Action Plan defines the

limiting factors to bald eagle population growth to be severe but not increasing significantly, and considers the population and distribution as restricted. Golden eagles were more recently designated as an SGCN due to an unknown population trajectory and concern over rapidly increasing threats, including but not limited to wind energy development. The Department considers limiting factors to golden eagles to be moderate but appear likely to increase in severity. The Department considers golden eagle population size to be restricted or declining. Wyoming is important to golden eagles regionally due to the number of breeding pairs present and the number of migrant and non-breeding individuals which use Wyoming seasonally or throughout the year.

The Department supports the goals of the revisions to permitted take, specifically the increased conservation benefit to bald and golden eagles. Given the conservation status of eagles in Wyoming, and the importance of Wyoming to eagles, we offer the following considerations pertaining to the four categories of proposed revisions to regulated eagle take and the Draft Environmental Assessment (DEA).

Revisions to Permitting Take at Wind Energy Facilities

Wind energy development is predicted to increase in Wyoming creating a potential for increased risk to bald and golden eagles. The Department applauds the attempt by the Service to facilitate the permitting process and increase the conservation benefit of permitted take for eagles. A major component of the revised permitting process would be the creation of a general take permit for wind energy facilities. The Service has provided a method to delineate areas eligible for a general take permit at wind energy facilities, which is currently based on estimated relative eagle abundance. Areas with estimated lower relative abundance are perceived to have lower risk to eagles and would therefore be eligible to apply for and receive a general permit.

Based on information provided by the Service, a small portion of Wyoming would be eligible for a general eagle take permit. The Department's recommendations target the areas eligible for a general take permit within Wyoming, and the proposed process as a whole, as impacts to the permitted facilities outside of the state may impact eagles in Wyoming. As such, we offer the following:

- The Department recommends broadening available data used to best estimate areas that qualify for general permits. The published support for use of eBird data was restricted to an analysis of bald eagle relative abundance only. Golden eagles, especially during the breeding season, are often in more remote areas with inherently less potential to be observed and recorded by an eBird participant. To alleviate these concerns, we provide the following two considerations:
 - Formally compare golden eagle eBird observations with independent data sets, such as nest locations and telemetry, to assess eBird's effectiveness to determine relative abundance and, thus, areas of lower perceived risk.
 - Integrate readily available data from the Breeding Bird Survey, Integrated Monitoring in Bird Conservation Regions (IMBCR), and species-specific studies

including the bald eagle nest occupancy data and west-wide golden eagle surveys. These datasets, with the exception of IMBCR, were used to estimate population sizes and allowable take in published studies and may be appropriate to consider for use here. Further, we suggest consideration of additional datasets and potentially initiation of additional studies to gather data needed to best identify areas eligible for general permits at the appropriate spatial scale.

- The Department recommends that projects with general permits require facility staff to conduct eagle scans more frequently than proposed. We recommend a minimum of once per month, not once per three months, during the period of highest use. The Department recommends the period of highest use be a minimum of four months in length. The Department further recommends eagle scans occur a minimum of once every other month, not every three months, during the remainder of the year.
- We support the use of three and four bald eagles to guide adaptive management as provided. The Department recommends consideration of a lower threshold for golden eagles given the stated goal of maintaining take limits at zero for golden eagles. Our recommended approach better supports the preservation standard while acknowledging the marked increase in the nationwide bald eagle population.
- The Department supports systematic monitoring to ensure take at facilities with a general permit is not exceeding predicted take numbers.
- The Department recommends a goal of five percent of facilities with general permits monitored annually versus the one percent proposed to better estimate the ability of relative abundance to predict collision risk to eagles. We also recommend a firmer commitment be provided by the Service to monitor the agreed-upon percentage of facilities with general permits.
- The Department recommends data collected during systematic monitoring be used to assess compliance on a project-scale, not solely to inform Eagle Management Unit (EMU) and national take rates.

The Department offers the following considerations for additional proposed changes to the take permit process at wind facilities, including facilities that are eligible for general and/or specific permits:

- The Department recommends focusing on standardized post-construction mortality monitoring methods and a minimum overall probability of detection (g) versus the need for a third party to conduct those surveys. The Department recommends consideration of a minimum g value of 0.30. Adequate reporting intervals should be defined to review compliance. The Department recommends a one-year minimum and three-year maximum period.

- The Department supports compensatory mitigation for all golden eagle take. We support the proposed level of compensatory mitigation and suggest periodic review to ensure continued adequacy.
- The Department supports acceptance of additional literature-supported mitigation measures. We also encourage the Service to consider habitat-based mitigation including but not limited to habitat protection, enhancement, and/or restoration.
- The Department recommends bald eagle nest buffer sizes in proximity to proposed wind energy facilities be informed by research instead of applying a buffer of 660 feet. Our recommended approach would be consistent with determination of golden eagle nest buffer sizes.
- The Department recommends allowing for different bald eagle nest buffer sizes by an appropriate geographic scale, such as EMU. We provide this recommendation because nest disturbance potential from a wind facility in Wyoming is likely different than disturbance distances in more heavily forested regions.
- The Department supports continued focus on integrating avoidance and minimization measures at all proposed wind energy facilities.
- The Department recommends the role of state agencies and requirements provided in state permits be directly acknowledged by the Service in future documents related to this proposed rule.

Revisions to Permitting Power Line Take

Electrocution is a primary source of eagle mortality in Wyoming. The Department supports the facilitation of a process to permit power line electrocutions and mitigate those losses. We support the process as proposed and the associated six conditions.

Revisions to Permitting Eagle Disturbance Take

The Department supports the revisions to facilitate permitting incidental disturbance due to activities conducted near bald eagle nests. We support the delineation of activities eligible for a general permit based on available and standardized avoidance and minimization measures. The Department recommends The Service consider an analysis of data from known bald eagle nest disturbance and take events to assist in informing an adequate minimum nest buffer size, as well as evaluating the proposed buffer size of 660 feet on a regional basis, prior to widespread application.

Revisions to Permitting Eagle Nest Take

The Department supports the issuing of general permits for bald eagle nest take as proposed.

Review of the Alternatives in the Draft Environmental Assessment

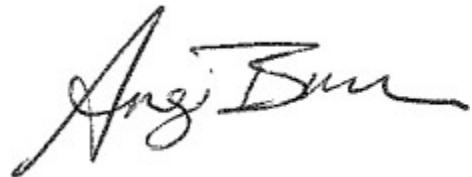
The Department has reviewed the DEA, including the four alternatives presented for consideration. The alternatives are as follows:

- Alternative 1: No Action.
- Alternative 2: General permits available for wind energy facilities; eligibility based on distance from nests; flat fee for mitigation.
- Alternative 3: General permits available for wind energy facilities; eligibility based on relative abundance and distance from nests; mitigation fee based on hazardous area.
- Alternative 4: Implement Alternative 3 for wind energy facilities; create additional general permits for power line entities, activities likely to cause nest disturbance, and nest removal activities.

Alternative 4 of the DEA addresses all categories considered in this proposed rule. The Department supports the proposed changes to regulated take for power-line entities, bald eagle disturbance take, and bald eagle nest take. The Department recommends updates to the proposed changes to eagle take at wind energy facilities as described above.

Thank you for the opportunity to comment. If you have any questions or concerns please contact Ross Crandall, Habitat Protection Biologist, at (307) 274-5482.

Sincerely,



Angi Bruce
Deputy Director

AB/rc/ct

cc: U.S. Fish and Wildlife Service
Randall Luthi, Office of Governor Gordon
Zack Walker, Wyoming Game and Fish Department
Zach Wallace, Wyoming Game and Fish Department
Chris Wichmann, Wyoming Department of Agriculture

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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-2020-0023-9273

Comment from Phan, Emily

Submitter Information

Name: Emily Phan

Address:

derwood, MD, 20855

Email: emilyphan3247@gmail.com

Phone: 2406782297

General Comment

I believe Eagles should continue to be protected and be on the endangered species list. Bald eagles are important because they eat dead animal matter and help with nature's clean-up process. They kill off weak, old, slower animals, leaving the healthiest to survive. Their population has declined because of pesticide use, habitat loss, and other human problems.

On June 1994, the US Fish and Wildlife service proposed that they be downgraded from endangered status to the less urgent status of threatened in all but 3 of 48 lower states.

Eagle stealing is a very urgent issue. Eagle taking is the legal term for killing or disturbing them and "incidental take" is when someone accidentally takes an eagle. Hunters over killed the bald eagle population, but they don't take in account the effect of removing them from the ecosystem/food chain. We need to work to enforce laws to furthermore increase the protection from taking eagles.

Wind turbines and powerline structures negatively affect breeding grounds for Eagles. Power lines and wind turbines directly kill wildlife such as bald eagles. We need to find a more sustainable way of producing electricity because it causes changes in animal behavior like displacement, increased predation risk, or affecting seasonal migration.

It is crucially important for us that the people protect the lives of bald eagles. They are a major keystone species, and they contribute so much to ecosystems. Moving more towards using renewable energy. We also need to continue implementing Acts like The Migratory Bird Treaty Act that prohibits the removal, taking, or killing of bird species without a permit. There has already been great success in the recovery of eagles and that success should not stop in the face of increased wind energy and power line infrastructure.

Sea, World (n.d.). Bald eagle. SeaWorld Parks & Entertainment. Retrieved November 15, 2022, from <https://seaworld.org/animals/facts/birds/bald-eagle/>

Service, U. S. F. and W. (2022, September 29). Eagle Management Program: U.S. Fish & Wildlife Service. FWS.gov. Retrieved November 15, 2022, from <https://www.fws.gov/program/eagle-management>

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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-2020-0023-9274

Comment from kero, bea

Submitter Information

Name: bea kero

Address:

whitehouse station, NJ, 08889

Email: bk1492@aol.com

Phone: 800-000-00000

General Comment

this major taking and killing of eagles it is not incidental at all. stop all killing and murder of eagles. stop all of it now. there is no call from the majority of the american population for this killing. stop all permits to kill eagles. stop all such permits now.

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Comment On: FWS-HQ-MB-2020-0023-1937

Permits for Incidental Take of Eagles and Eagle Nests

Document: FWS-HQ-MB-2020-0023-9275

Comment from Kalugin, Lukia

Submitter Information

Name: Lukia Kalugin

Email: lukalugin@hotmail.com

General Comment

Incidental take is the unintentional killing of eagle populations resulting from the development of wind farms. Possible alternatives would be to consider placement of wind turbines in areas with low eagle population numbers and conducting a reasonable amount of eagle population surveys annually. Considering that the maximum tenure of permits for the incidental take of eagles got extended from 5 to 30 years, I believe that these exceptions for industries and other permitted parties have become particularly stringent. The preservation standard for eagles needs to be maintained since human-caused mortality of eagles has increased in recent years. Possible compensatory mitigation approaches to offset population losses could include habitat enhancement or expansion, but these mitigation developments need regular assessments to evaluate their effectiveness. It's beneficial for applicants to participate in a more streamlined process because it incentivizes them to apply for the permit. What's concerning, however, is that wind energy companies are not required to apply for a permit prior to construction of energy facilities. I believe that eagle kills can be prevented if wind energy companies are required to be permitted if there's evidence of bird kills. It's also necessary for permittees to be transparent on eagle kill data for proper monitoring of populations in affected habitat. Therefore, with an increase in the tenure for permits, there should be a subsequent increase in administrative check-ins.

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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-2020-0023-9276

Comment from Arizona Game and Fish Department

Submitter Information

Name: Clay Crowder

Email: pep@azgfd.gov

Government Agency Type: State

Government Agency: Arizona Game and Fish Department

General Comment

Attached are the Arizona Game and Fish Department's comments on the proposed rule.

Attachments

M22-003305807 AZGFD comm to Eagle Act Incidental Take



December 2, 2022

Public Comments Processing

Attention: FWS-HQ-MB-2020-0023

U.S. Fish and Wildlife Service; MS: PRB/3W

5275 Leesburg Pike, MS-PRB

Falls Church, VA 22041-3803

RE: U.S. Fish and Wildlife Service Permits for Incidental Take of Eagles and Eagle Nests
(Docket No. FWS-HQ-MB-2020-0023).

The Arizona Game and Fish Department (Department) appreciates the opportunity to review and comment on the proposed revisions to the **Permits for Incidental Take of Eagles and Eagle Nests**. Under Title 17 of the Arizona Revised Statutes, the Department, by and through the Arizona Game and Fish Commission (Commission), has jurisdictional authority and public trust responsibilities to conserve and protect the state fish and wildlife resources. In addition, the Department manages threatened and endangered species through authorities of Section 6 of the Endangered Species Act and the Department's 10(a)(1)(A) permit. It is the mission of the Department to conserve and protect Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations. As such, the Department appreciates and supports the inclusion of a general eagle nest take permit for the recovery of Threatened and Endangered species. For your consideration, the Department provides the following comments based on the agency's statutory authorities, public trust responsibilities, and special expertise related to wildlife resources and recreation.

While the Department appreciates, and generally supports, the intent of simplifying and streamlining the U.S. Fish and Wildlife Service's (USFWS) incidental take permitting process for eagles and eagle nests, the proposed approach poses significant concern for Local Area Populations (LAPs), in particular, for the statewide bald and golden eagle populations in Arizona. The following Department comments outline specific areas of the proposed regulation that require further consideration and identification of a solution prior to publishing the final rule. Addressing and/or solving these issues will meet the "stable or increasing" standard of the Bald and Golden Eagle Protection Act (BGEPA) in Arizona, while simplifying and streamlining the BGEPA incidental take permitting process.

General Permit Issuance Process

Currently, the Department fills an integral and active role in the environmental impact evaluations for proposed wind energy projects in Arizona. With an automatically generated incidental take permit containing standardized avoidance and mitigation measures as proposed, the general permit process bypasses the opportunity for state wildlife agency involvement prior to permit issuance. As a result of this proposed action, opportunities for development and

implementation of appropriate site-specific avoidance, minimization, and/or mitigation measures are missed. For example, the 660 ft bald eagle or 2-mile golden eagle buffers may be inadequate to avoid incidental take, or be overly restrictive, depending on site specifics and project types. The Department has already created this system as described in the Conservation Assessment and Strategy for the Bald Eagle in Arizona (2006). Therefore, the Department requests the USFWS, prior to permit issuance, to incorporate a mechanism for state wildlife agencies input in the process. Using this mechanism, a state wildlife agency can either: concur that a project poses low risk to eagle species and the adequacy of proposed standard avoidance, minimization, and/or mitigation permit stipulations; or can request revised stipulations appropriate for the specific site or project type. Most states have a statutory requirement to conserve and protect wildlife, and unless a particular state waives the opportunity, the proposed process usurps that statutory authority. A state wildlife agency concurrence or requested revisions should be a requirement for a general permit application. In addition, state wildlife agencies should be notified upon issuance of the general permits, as opposed to the annual compilation of issued permits as proposed.

The USFWS indicates that they will continue to track authorized general permit take spatially to identify LAPs of concern. Once identified, the USFWS would direct in-lieu fee programs to target mitigation within those LAPs. Additionally, the USFWS may temporarily or indefinitely suspend the general permit program in areas of concern. With the proposed automatic issuance of general permits, the Department is concerned that there is no identified frequency of tracking authorized general permit take. Arizona is located within the Pacific South Eagle Management Unit (EMU) where the bald eagle allowable take rate is 3.8% of population and the entire EMU take limit of 15 individuals. The issuance of general permits within the Pacific South EMU needs to be closely monitored to avoid over-issuance of allowable take permits. The Department recommends that the USFWS develop a mechanism to track general permit issuance within specified EMU and LAP to ensure the general permitting program is immediately suspended once allowable take thresholds are reached. In some LAPs, a lapse in allowing more take than the population can allow can lead to irrevocable consequences (a reversion of years of conservation successes and hundreds of thousands of dollars wasted).

Eagle Incidental Take Permits for Wind Energy

In particular, the Department is disappointed in the lack of state wildlife agency involvement in the development and/or validation of the eligibility map for general permitting of wind energy projects. The Department spends over \$300,000 annually to monitor, conserve, and protect eagle populations in Arizona, as authorized under state statute. Arguably, Arizona has one of the most robust and longest lasting statewide datasets of both bald and golden eagles in the nation. The USFWS recognized in the Draft Environmental Assessment 2022 Eagle Take Permit Rulemaking (September 2022) that, “The risk of general permit issuance for bald eagles being inconsistent with our preservation standard is highest in the southwestern U.S., an area characterized by relatively low bald eagle EMU take limits and relatively small bald eagle LAPs.” Despite this acknowledgement, the USFWS developed an eligibility map for general permitting of wind energy projects that includes 87% of Arizona’s relatively small and isolated bald eagle breeding population (82 of 94 breeding territories). For golden eagles, the eligibility map includes 52% of Arizona’s golden eagle breeding population (180 of 346 breeding territories). A required “small compensatory mitigation requirement” that “could be used to offset bald or golden eagle take” is not an adequate assurance for maintaining the preservation

standard for either species in Arizona without first amending the eligibility map to limit the issuance of these permits in high quality eagle habitats within the southwestern U.S. as identified.

In addition, although ebird can be a powerful tool, application of the ebird data for this purpose is demonstrably flawed, in part, due to large expanses of remote and/or inaccessible eagle habitats where “birding coverage” is minimal to non-existent (http://azfo.org/birding/documents/AZ_BirdGaps_6-30-2020.pdf). Many of Arizona’s eagle nests can only be reached through a multi-day hike or by helicopter. These nests will not appear in ebird. The Department also questions why the USFWS resorted to using the ebird dataset, when state wildlife agencies may have more accurate and robust datasets. For Arizona, the Department’s dataset contains nearly 40 years’ worth of survey and monitoring information, and a complete population census is conducted annually. In order to address the eligibility map issue, the Department requests the USFWS suspend issuance of general permits within Arizona pending the redevelopment of a more informed general permit eligibility map, in collaboration with the Department. By utilizing the Department’s data, the revised map would ensure that high bald or golden eagle breeding densities across Arizona, and the high-quality adjacent habitats utilized by dispersing juveniles, subadults, and non-breeding adults would be excluded from general BGEPA permit eligibility. Additionally, these permit eligibility maps should be re-evaluated and updated at a minimum of every five years to ensure accuracy since the Department is conducting annual surveys.

The seasonal thresholds identified in Table 1: Relative Abundance Thresholds for Wind Energy General Permits do not coincide with periods of “movement” or “non-movement” for bald or golden eagles in Arizona. The Department would refer the USFWS to the plethora of Department Nongame Technical Reports over the last 40 years for the most accurate information on bald eagle movements in Arizona.

The Department continues to question the rationale for the 660 ft bald eagle nest disturbance buffer required for placement of wind turbines (see discussion below). The 660 ft distance only provides minimal assurance that typical ground-based activities would not result in disturbance to a nesting attempt. Wind turbines are not a typical ground-based activity. The Department does not understand why the USFWS would apply the same buffer to wind turbine construction as, per se, recreational fishing. Since wind turbine construction and operation at 660 ft distances could easily cause disturbance, annual loss of productivity to active nests and elevated risks for multiple direct bald eagle fatalities, the USFWS is setting wind energy projects up for failure. This creates avoidable uncertainty for projects that hold or would be seeking general permits. The Department recommends that the USFWS re-evaluate the best approach to applying bald eagle buffers for wind energy and use state specific data. For example, applying a buffer around perennial waters with breeding bald eagles would more effectively limit bald eagle fatalities of all age classes and minimize losses to productivity.

Pre- and Post- Construction Surveys for Wind Energy Projects

The Department does not support the elimination of pre- and post-construction surveys for general or specific permitting of wind energy projects. Currently, the pre- and post-construction surveys conducted at proposed and constructed wind energy developments follow the minimum

survey requirements of the BGEPA with bird and bat surveys conducted concurrently. These surveys provide valuable data used to inform turbine micro-siting and operational minimization or mitigation needs. Elimination of pre- and post-construction requirements will effectively eliminate the opportunities to avoid poorly sited projects and/or implement site specific avoidance, minimization, and the necessary mitigation measures for eagles, MBTA, and/or bat species. Instead of relying on the coarse ebird estimates which are publicly sourced, the standardized site-specific eagle use counts with a minimum of 30% project coverage should be used to ensure relative abundance rates consistent with the ebird established thresholds. The standardized post-construction fatality monitoring can then be used to validate or inform adjustments to abundance thresholds for future general permit eligibility. In addition, with wind energy infrastructure continually changing, getting larger, and operating at greater wind speed ranges, the resulting future impacts on eagle, MBTA, and/or bat species are unknown without continued systematic post-construction fatality monitoring. The Department recommends that pre- and post-construction surveys remain as the current minimum standard for all wind energy projects with post-construction fatality monitoring required for at least two years within the first 5-year permit period. Once fatality rates are documented and determined to be within acceptable limits at a facility, with or without minimization measures in place, the USFWS general permit funded fatality monitoring strategy can be applied for the remainder of the 30-years of operation. The USFWS standardized and systematic fatality monitoring should also include an evaluation of the project personnel based three month monitoring using the 15-20% detection estimates. The continuation of these site-specific project funded surveys are critically important if the USFWS proceeds without amending and/or validating the ebird generated general permit eligibility map. When eagle mortalities are encountered, wind facilities should continue to be reported immediately as opposed to the proposed 2-week timeframe for wind energy projects.

Eagle Incidental Take Permits for Power Lines

The Department supports the creation of a general permit process for power line infrastructure. As currently proposed, three of the six conditions need some refining to encourage participation in the general permit process and minimize undue burden to power providers while maximizing benefit to eagles.

As proposed, the Department supports Condition 1, 3, and 5. Condition 1 requires wrist-to-wrist or head-to-foot distances between phases or grounds on all new or reconstructed infrastructure which is a prudent measure to reduce electrocution risk across the landscape. The Department supports Condition 3 as this is a standard that power companies in Arizona have been following for years. The Department supports Condition 5 to require development of a collision-risk strategy with commitments for implementation when eagle collisions are detected.

The Department recommends that Conditions 2, 4, and 6 be amended. Condition 2 requires all new or reconstructed infrastructure to be sited greater than 2-miles from golden eagle nests or 660 ft from bald eagle nests or roosts (see comments below on the 660 ft criteria), and 1 mile from eagle foraging areas. While these regulations may help reduce electrocution risk, the Department also believes they would be a barrier to general permit participation. While wrist-to-wrist or head-to-foot distances between phases or grounds are often adequate, electrocution risk significantly increases during wet weather conditions. Utilization of wing tip-to-wing tip distances would greatly reduce electrocution risks during all weather conditions.

The Department recommends that Condition 2 is changed to require wing tip-to-wing tip distancing for all new or reconstructed infrastructure within 2-miles of golden eagle nests or 660 ft from bald eagle nests or roosts, and 1 mile from eagle foraging areas. The Department believes that these changes would provide greater electrocution protections within eagle habitats while also providing power company flexibility for compliance where eagles and power demands overlap.

Condition 4 requires development of a proactive retrofit strategy and 5-year retrofitting of 1/10th of high-risk poles. The Department is concerned that this requirement would discourage participation in the general permit process while also depleting the only currently approved USFWS in-lieu fee mitigation option. The Department recommends that Condition 4 be revised to require development of an infrastructure eagle risk assessment with a commitment to participate in the in-lieu mitigation program to proactively retrofit high-risk infrastructure.

Although the Department recognizes the importance for developing strategies to reduce eagle shootings (Condition 6), requiring power companies to develop these strategies as a permit condition would not be appropriate and would be a deterrent from general permit participation. The Department concurs with the requirement for the power company to immediately report dead eagles. This provides state wildlife agencies and/or the USFWS opportunity to investigate mortality causes. From there, the USFWS and state wildlife agencies can voluntarily work with power companies on development and implementation of these strategies. Funding for implementation should come from permit mitigation fees.

Eagle Disturbance Take Permits

The Department is concerned with the prescriptive application of the 660 ft and 330 ft buffers for general bald eagle disturbance permits. The use of 660 ft has long been contested by the Department since its first appearance in the Bald Eagle Management Guidelines over 20 years ago. The distance was based upon viewsheds in the eastern U.S. and the Department has argued that this distance does not work for the species in open landscapes like the desert southwest. The Department has also argued that this arbitrary distance does not apply to all situations, in that some eagles are more accustomed to disturbance than others. Eagle habitats and eagle pair tolerances are extremely diverse. As a result, the Department has created a state specific conservation strategy that has proven effective in Arizona's diverse bald eagle breeding habitats. These state guidelines provide the flexibility to address disturbance avoidance in remote areas where nesting pairs require greater than 660 ft buffers as well as nesting sites established on, for example, operating golf courses where zero buffers are required. With this in mind, Sections (b) (1-8) would be greatly improved if language was added to each (similar to 8) that provided allowances for greater or smaller distances based upon a pairs' exhibited tolerance levels. With this built in flexibility, project proponents can work with local USFWS species leads and state wildlife agencies to determine when acquisition of a general disturbance permit is necessary.

The Department requests the USFWS to consider and incorporate all of the above comments to maintain adherence to the preservation standard of the BGEPA and improve the overall participation in the proposed general permitting process. It is particularly critical that the eligibility map for wind energy is amended, in cooperation with the Department, to maintain specific permit protections across Arizona's best eagle breeding habitats.

December 2, 2022

Page 6

If you have further questions, contact Kenneth Jacobson at kjacobson@azgfd.gov or (623) 236-7575.

Sincerely,



Clay Crowder
Assistant Director, Wildlife Management Division

AZGFD # M22-003305807

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-2020-0023-9277

Comment from Southern California Edison

Submitter Information

Name: Kenneth Borngrebe

Address: United States,

Email: kara.donohue@sce.com

Phone: 626.302.6472

Organization: Southern California Edison

General Comment

Please see attached comment letter from Southern California Edison

Attachments

FWS-HQ-MB-2020-0023 SCE_comments_Eagle_Proposed_Rule_12072022



November 29, 2022

RE: Docket No. FWS-HQ-MB-2020-0023; FF09M30000-223-FXMB12320900000, Permits for Incidental Take of Eagles and Eagle Nests

Dear U.S. Fish and Wildlife Service,

Southern California Edison (SCE) appreciates the opportunity to submit comments regarding the U.S. Fish and Wildlife Service ("Service") Proposed Rule Docket No. FWS-HQ-MB-2020-0023, for Permits for Incidental Take of Eagles and Eagle Nests ("Proposed Rule").

SCE is an investor-owned electric utility responsible for the construction, operation, and maintenance of electric transmission, distribution, telecommunication, and generation facilities throughout a 50,000-square-mile service territory in central and southern California.

It is SCE's responsibility to provide safe, reliable, cost-effective service to its over 15 million customers as mandated by several state and Federal agencies/entities. In addition, SCE is committed to ensuring compliance with state and federal law.

The proposed rule would greatly improve the current regulations authorizing eagle incidental and nest take permits. SCE echoes the praise provided in the public comment letter submitted by the Avian Power Line Interaction Committee (APLIC) for this proposed rule. However, SCE has suggestions for clarification as well as recommendations for modifications that would allow for more participation in the general permit program by the electric utility industry. Our suggestions and recommendations, specific to the general-permit option for power lines and disturbance take permits, are set forth below for the Service's consideration in creating a viable and effective program.

- **Clarify which pole infrastructure must be electrocution-safe for eagles:** The first condition, which stipulates that all new construction and reconstruction of pole infrastructure must be electrocution-safe for bald and golden eagles, should be revised to only include locations within an electric utility's territory where eagles may interact with power lines. SCE operates power lines in both rural and suburban areas where eagles occur as well as highly urbanized areas where eagles do not occur. Upgrading pole infrastructure to be electrocution-safe for eagles in areas where eagles are not present cannot be justified given the significant cost impacts with no reduction in risk of eagle take.
- **Expand the options that can be considered when siting new transmission lines:** The second condition, which considers eagles in the construction of and modifications to transmission lines, recommends siting at least two miles from golden eagle nests and one mile from bald or golden eagle foraging areas. This would be infeasible for SCE's service territory, where eagle foraging is widespread outside urban areas. In addition, flexibility in siting is extremely limited and when reconstructing a new line it is often preferable to use current rights-of-way to minimize new areas of disturbance or to stay within prescribed utility corridors. As such, colocation and route feasibility need to be included as considerations when siting new transmission lines. Additionally, once power lines are sited, there are several ways that utilities can avoid or minimize impacts to eagles, such as using avian-safe designs, conducting nest surveys, and implementing no-activity buffers for active nests.

- **Replace the proactive retrofit strategy condition with a more stringent reactive retrofit strategy condition.** The fourth condition, which requires a proactive retrofit strategy to retrofit 10% of poles every five years, requires the same level of effort from utilities with very low take of eagles as utilities with much higher levels of take. SCE, which has a low take and a high number of poles, would be disincentivized to apply for this permit because a proactive retrofit strategy on this scale would likely cost in the tens of millions of dollars a year while having a relatively small impact on the preservation of eagles. In order to address this discrepancy, SCE recommends removing the proactive retrofit strategy condition and instead increasing the reactive retrofit strategy requirement to include more poles. This strategy would also be proactive in that the utility would be addressing additional poles prior to another incident occurring. SCE also asks that utilities receive retrofit credit for poles made electrocution-safe through other utility programs (e.g., deteriorated pole replacements, grid hardening).
- **Specify that audits will be completed by Service staff.** It is SCE's understanding that audits of permittees would be performed by Service staff and not by a contractor. It is important that this remains the case for utilities to feel comfortable participating in the permit program.
- **Stipulate that permit program is voluntary.** It is important to stress that participation in the program is voluntary and should not be used by federal agencies as a requirement in order to obtain other federal permits. As suggested by APLIC in their comment letter for this proposed rule, SCE recommends the Service develop a Memorandum of Understanding with other federal agencies to address the voluntary nature of this permit program under the purview of the Service.
- **Clarify disturbance activities for golden eagle nests:** In order to improve management programs, applicants need to better understand which activities will be considered as causing disturbance take for golden eagle nests. Utilities perform many types of activities that are not likely to rise to the level of the definition of disturbance, such as driving on access roads, minor maintenance of infrastructure, and some fire prevention activities. It is important for the Service to clarify that these types of activities are allowed without obtaining a permit.
- **Collaborate with state wildlife agencies.** SCE encourages the Service to work with state wildlife agencies to identify conflicts between this proposed rule and state laws and regulations and to identify solutions that allow utilities that obtain federal permit coverage for take of eagles to be covered under state laws and regulations as well.

SCE respectfully requests that the Service consider these comments when preparing the final rule. Should you have any questions about SCE's comments, please contact me at 626.302.6472.

Regards,

DocuSigned by:

Kenneth Borngrebe
7419790CAF844B0...
Kenneth Borngrebe
Director – Environmental Services Department
Southern California Edison

12/7/2022

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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-2020-0023-9278

Comment from Ohio Division of Wildlife

Submitter Information

Name: Kendra Wecker

Address:

2045 Morse Rd
Building G
Columbus, OH, 43229

Email: laura.kearns@dnr.ohio.gov

Phone: 614-265-6300

Government Agency Type: State

Government Agency: Ohio Division of Wildlife

General Comment

The Ohio Division of Wildlife is submitting comments in an attached pdf.

Attachments

ODWProposedEagleRuleComments2022



Ohio Department of Natural Resources

MIKE DEWINE, GOVERNOR

MARY MERTZ, DIRECTOR

Kendra S. Wecker, Chief

Division of Wildlife

2045 Morse Rd, Building G

Columbus, Ohio 43229

Phone: (614) 265-6300

December 6, 2022

Jerome Ford
Assistant Director
Division of Migratory Birds
US Fish and Wildlife Service
5275 Leesburg Pike, MS-MB
Falls Church, VA 22041-3803

Dear Assistant Director Ford:

The Ohio Department of Natural Resources – Division of Wildlife is Ohio’s state wildlife agency responsible for conserving and improving fish and wildlife resources and their habitats for sustainable use and appreciation by all. We appreciate the opportunity to provide comments on U.S. Fish and Wildlife Service (USFWS or Service) Proposed Rule regarding changes to eagle take permits under Announcement FWS-HQ-MB-2020-0023.

We have reviewed the comments provided by the Mississippi Flyway Council and fully support those comments. In addition, we would like to emphasize the following:

For Eagle Wind Energy Permits:

- The eagle relative abundance data map modeled to determine general permit eligibility is not accurate for Ohio. The Division of Wildlife conducted a bald eagle nest census in 2020 and included a map of the distribution of eagle nests by county to show areas of breeding bald eagle density (Figure 1). There is some lack of concordance between the proposed rule’s eagle density map and our map, which we find concerning.

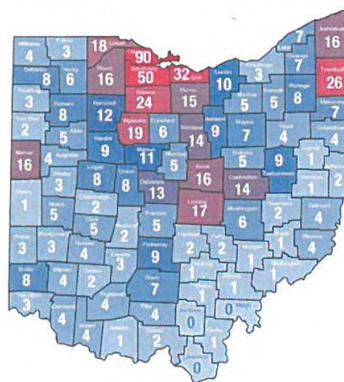


Figure 1. Abundance of bald eagle nests in Ohio by county from the 2020 Ohio Division of Wildlife’s statewide nesting census of bald eagles.



Ohio Department of Natural Resources

MIKE DeWINE, GOVERNOR

MARY MERTZ, DIRECTOR

- Consequently, the Ohio Division of Wildlife, and other state agencies in general, should be consulted for eagle nest locations in their respective states when wind companies are conducting surveys to determine if eagle nests have been documented near a proposed or existing wind facility. Many states have continued to track eagle nests and it would be a serious oversight to disregard these data.

For Eagle Nest Disturbance Permits:

- Under disturbance permit changes, it states that hazing of eagles is not considered nest disturbance unless it is within 660 feet of an in-use nest. We feel that any intentional hazing of any nesting eagle should not be allowed, and certainly 660 feet is too close. If hazing of nesting eagles is continued to be allowed, we recommend a buffer distance of at least $\frac{1}{4}$ mile.

For Eagle Nest Take Permits:

- \$100 is too low for an eagle nest take general permit application fee. We recommend \$500 as a more appropriate application fee.

Thank you again for the opportunity to provide comments and your consideration.

Sincerely,

Kendra S. Wecker
Chief

PUBLIC SUBMISSION

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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-2020-0023-9279

Comment from Central Flyway

Submitter Information

Name: Alicia Hardin

Email: joel.jorgensen@nebraska.gov

Government Agency Type: State

Government Agency: Central Flyway

General Comment

See attached file(s)

Attachments

Central Flyway 2022.1213.FWS-HQ-MB-2020-0023_BGEPA_Permit Comments

Central Flyway Council



Alberta Kansas Nebraska North Dakota Oklahoma South Dakota Wyoming
Colorado Montana New Mexico Northwest Territories Saskatchewan Texas

www.centralflyway.org

December 14, 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

To Whom It May Concern:

The Central Flyway Council (CFC) is a coalition of ten states, two Canadian provinces, and one Canadian territory that works in conjunction with the U.S. government to manage migratory birds and their habitats throughout a large sector of North America. The CFC, as well as individual states, have worked collaboratively with the U.S. Fish and Wildlife Service (Service) to protect, conserve, and manage Bald Eagles (*Haliaeetus leucocephalus*) and Golden Eagles (*Aquila chrysaetos*) for decades. Thus, the CFC and its member states have a particular interest and play a unique role in development of the Service's proposed rule regarding permits for incidental take of eagles and eagle nests. The CFC appreciates the Service's efforts to improve the efficiency and effectiveness of permitting of eagle take permits. Overall, the CFC believes the approach the Service is proposing is reasonable. Below, we provide feedback in response to the Service's request for public comments to the proposed rule, published on September 30, 2022, Federal Register Vol. 87, No. 189.

- 1) **Preferred Alternative:** The CFC generally supports Alternative 4 outlined in the Environmental Assessment over the other alternatives (however, see additional comments, below).
- 2) **Auditing:** The CFC is concerned about the Service's auditing plan to protect against false certification of general permits. On page 38 of the Environmental Assessment, it states that "...the Service expects to randomly audit up to 1% of general permits on an annual basis to ensure compliance with conditions of the general permit." We believe it is imperative the Service make a firm commitment to audit a higher percentage (e.g., 5-10%) of general permits to provide confidence to all stakeholders that the program is indeed effective, and compliance is satisfactory. We are aware of numerous past examples where the Service did not follow through with expected actions because of budget constraints. Furthermore, the Service's language that "up to 1%" is the goal is particularly concerning because it means the Service may end up auditing zero general permits because zero is within the stated range of values. The CFC believes the Service should have predefined triggers for increasing the percentage

Central Flyway Council



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of audits or reviewing general permit applications (e.g., adaptive management) if the compliance rate during any one year is unsatisfactory (e.g., >5% of audited permits).

- 3) **Eagle relative abundance:** The CFC supports the concept of using Bald and Golden eagle relative abundance to determine where entities are eligible for general permits. However, we recommend the Service provide clarification and firm commitments on how frequently relative abundance thresholds will be updated. We recommend relative abundance thresholds be updated every 5 years.
- 4) **Reliance on eBird:** We recognize that eBird data and modeling are valuable resources. However, we are concerned the Service is becoming overly reliant on eBird as its only resource defining species' distributions and occurrences. eBird depends on observational data from the public. Coverage and data submission are sparse throughout much of the Central Flyway. While modeling assumptions may be able to compensate for limited data, it is also important to recognize modeling has limitations and is imperfect. Some states have extensive long-term datasets that would be valuable to include in the relative abundance models. We recommend the Service incorporate other data sources, when available, to determine eagle abundance. We also recommend the Service require project proponents to complete pre-construction surveys when appropriate.
- 5) **Self-monitoring frequency:** The CFC understands the Service's intention of reducing the obligation and costs of monitoring to increase participation in the permitting system. However, requiring monitoring once every three months is inadequate. We recommend monitoring be required at least once a month. We also recommend following a simple and straightforward standardized protocol for monitoring.
- 6) **Mortality reporting:** The proposed rules states that "[a]ny dead or injured eagle discovered within the project, regardless of cause, must be promptly reported to the Service (i.e., within 2 weeks)." This wording and approach are not acceptable. The expectation is ambiguous, and up to two weeks cannot be considered prompt under any definition. The CFC recommends any eagle mortality be reported within 48 hours. Consequently, federal law enforcement will have a higher probability of determining the correct cause of death before the carcass deteriorates.
- 7) **State notification and engagement:** It is not clear in the proposed rule how the Service will interface with states, and this should be clarified and prioritized. Some states may have their own permitting requirements for the take of Bald and Golden eagles and their nests and/or have a responsibility regarding the protection and management of eagles. In addition, eagle permits are only one aspect of wisely siting wind energy facilities to avoid and minimize impacts to wildlife and ecosystems, and states also provide guidance for project siting, which includes consideration for Species of Greatest Conservation Need and at-risk habitats. It is important the Service take the necessary steps to communicate and share information with States about

Central Flyway Council



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the issuance of eagle permits proactively and consistently. We recommend that states are notified when general permits are approved within four (4) weeks of issuance, with a commitment to explore options for immediate state notification through an automated system, and it must be clear to applicants that state permits may be required to take eagles. We also recommend the Service share copies of facilities' annual reports with states. We also stress that communication internally within the Service about permit issuance will be important because state agency personnel have established relationships with state Ecological Services (ES) personnel. ES staff should be knowledgeable about permits issued by Regional Service staff.

- 8) **Reconciling Service and state buffer distances:** The Service proposes issuing general disturbance take permits within buffer distances (e.g., 660 feet around Bald Eagle nests) to reduce the administrative burden. We believe it is important the Service take proactive steps to reconcile recommended buffer distances with states where long-established and potentially legally mandated state-specific buffers exist. Inconsistency among Service disturbance take rules and state regulations and recommended buffers will complicate consultation, technical assistance, and increase uncertainty for agency staff, affected parties, industry, and conservation partners. We recommend that the Service work with states and Flyways to develop updated and consistent buffer recommendations prior to publishing a final rule.

The CFC looks forward to working with the Service toward continued conservation and protection of Bald and Golden eagles, as well as all migratory birds.

Sincerely,

A handwritten signature in blue ink that reads "Alicia Hardin".

Alicia Hardin
Central Flyway Council