



Billing Code: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R9-MB-2011-0094]

[FF09M21000-145-FXMB123109EAGLE]

Eagle Permits; Notice of Intent to prepare an Environmental Assessment or an Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; notice of public scoping meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, us, or we), announce five public scoping meetings to inform our decision to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, in conjunction with an evaluation of our eagle management objectives. The decision to initially prepare an EA or EIS will be, in part, contingent on the complexity of issues identified during, and following, the scoping phase of the NEPA process. The scoping meetings will provide an opportunity for input from other agencies, Tribes, nongovernmental organizations, and the public on the scope of the NEPA analysis, the pertinent issues we should address, and alternatives we should analyze.

DATES: To ensure consideration of written comments, they must be submitted on or before [insert date 90 days from publication of this notice in the *FEDERAL REGISTER*]. See

SUPPLEMENTARY INFORMATION for the locations and dates of the scoping meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the locations of the scoping meetings. To obtain additional information about the topics that will be presented at the public scoping meetings, go to <http://www.eaglescoping.org>.

You may submit written comments by one of the following methods:

Electronically: Go to the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Search for FWS-R9- MB-2011-0094, which is the docket number for this notice, and follow the directions for submitting comments.

By hard copy: Submit by U.S. mail to Public Comments Processing, Attn: FWS-R9-MB-2011-0094; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM, Arlington, VA 22203.

Please note in your submission that your comments are in regard to Eagle Management and Permitting. We request that you send comments by only one of the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Availability of Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Eliza Savage, at 703-358-2329 (telephone), or eliza_savage@fws.gov (email). Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8337 for TTY assistance. Alternatively, information presented at the public scoping meetings can be viewed at <http://www.eaglescoping.org>.

SUPPLEMENTARY INFORMATION:

Public Scoping Meetings

We will hold informal public informational sessions and present currently identified issues at the following dates and times:

1. July 22, 2014: Sacramento, CA, 5 p.m. to 8 p.m., Red Lion Hotel, Woodlake Conference Center, 500 Leisure Lane, Sacramento, 95815.
2. July 24, 2014: Minneapolis, MN, 5 p.m. to 8 p.m., DoubleTree Bloomington – MSP South, 7800 Normandale Blvd, Bloomington, MN 55439.
3. July 29, 2014: Albuquerque, NM, 5 p.m. to 8 p.m., DoubleTree Albuquerque, 201 Marquette Avenue Northwest, Albuquerque NM 87102.
4. July 31, 2014: Denver, CO, 5 p.m. to 8 p.m., Holiday Inn Denver Airport, 6900 Tower Rd, Denver CO, 80249.
5. August 7, 2014: Washington, DC, 1 p.m. to 5 p.m., South Interior Building, 1951 Constitution Ave, NW Washington, DC 20240.

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR), define the “take” of an eagle to include the following broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (§ 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the

“taking, possession, and transportation of [bald eagles or golden eagles] . . . for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or . . . for the protection of wildlife or of agricultural or other interests in any particular locality,” provided such permits are “compatible with the preservation of the bald eagle or the golden eagle” (16 U.S.C. 668a).

On September 11, 2009, we published a final rule that established two new permit regulations under the Eagle Act (50 FR 46836). One permit authorizes take (removal, relocation, or destruction) of eagle nests (50 CFR 22.27). The other permit type authorizes nonpurposeful take of eagles (50 CFR 22.26). The nonpurposeful eagle take regulations provide for permits to take bald eagles and golden eagles where the taking is associated with, but not the purpose of, an activity. The regulations provide for standard permits, which authorize individual instances of take that cannot practicably be avoided, and programmatic permits, which authorize recurring take that is unavoidable even after implementation of advanced conservation practices. We have issued standard permits for commercial and residential construction, transportation projects, maintenance of utility lines and dams, and in a variety of other circumstances where take is expected to occur in a limited timeframe, such as during clearing and construction.

“Programmatic take” of eagles is defined at 50 CFR 22.3 as “take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.” Take that does not reoccur, or that is caused solely by indirect effects, such as short-term construction, does not require a programmatic permit. For additional explanation of programmatic take and programmatic permits, see 74 FR 46841–46843.

We can issue programmatic permits for disturbance as well as take resulting in mortalities, based on implementation of “advanced conservation practices” developed in coordination with the Service. “Advanced conservation practices” are defined at 50 CFR 22.3 as “scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.” Most take authorized under § 22.26 to this point has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines.

The Eagle Act requires the Service to determine that any take of eagles it authorizes is compatible with the preservation of bald eagles or golden eagles. In the preamble to the final regulations for eagle nonpurposeful take permits, and in the Final Environmental Assessment of the regulations, we defined that standard to mean “consistent with the goal of stable or increasing breeding populations” (74 FR 46838).

On April 13, 2012, the Service initiated two additional rulemakings: (1) a proposed rule (“Duration Rule”) to extend the maximum permit tenure for programmatic eagle nonpurposeful take permit regulations from 5 to 30 years (77 FR 22267), and (2) an Advance Notice of Proposed Rulemaking (ANPR) soliciting input on all aspects of those eagle nonpurposeful take regulations (77 FR 22278). The ANPR highlighted three issues on which the Service particularly hoped the public would comment: eagle population management objectives, compensatory mitigation, and programmatic permit issuance criteria.

The Duration Rule was finalized on December 9, 2013 (78 FR 73704). Under the revised regulations, the maximum term for programmatic permits was extended from 5 to 30

years. This change is intended to facilitate the responsible development of projects that will be in operation for many decades and bring them into compliance with statutory mandates protecting eagles. The longer term permits will incorporate conditions that provide for adaptive management. Permits issued for periods longer than 5 years are available only to applicants who commit to implementing adaptive management measures if monitoring shows the measures are needed and likely to be effective. The required adaptive management measures will be negotiated with the permittee at the outset and specified in the terms and conditions of the permit.

At no more than 5-year intervals from the date a permit is issued, permittees must compile a report documenting any fatalities and other pertinent information for the project and submit the report to the Service. The Service will evaluate each permit to reassess fatality rates, effectiveness of measures to reduce take, the appropriate level of compensatory mitigation, and eagle population status. Depending on the findings of the review, permittees may be required to undertake additional conservation measures consistent with the permit. The Service will make mortality information from both the annual and the 5-year compilation report available to the public.

Management Objectives for Bald and Golden Eagles

The language of the Bald and Golden Eagle Protection Act provides flexibility with regard to defining management objectives for bald and golden eagles. The management objective directs strategic management and monitoring actions and, ultimately, determines what level of permitted eagle removal can be allowed.

We are considering modifying current management objectives for eagles, which were established with the 2009 eagle permit regulations and Final Environmental Assessment of

our regulatory permitting system under the Eagle Act. Different management objectives could be set for bald and golden eagles. At least four elements may be considered when establishing a management objective: (1) The population objective and relevant timeframe for it to be met; (2) eagle management units (EMUs), or the geographic scale over which permitted take is regulated to meet the population objective; (3) whether we also set an upper limit on take at a finer scale than the EMU to avoid creating population sinks in local breeding populations; and (4) our level of risk tolerance. The level of risk tolerance means how much risk the agency is willing to take when information is uncertain in carrying out management actions (e.g., setting levels of authorized take). For example, when information is less certain, a more conservative approach may be adopted to avoid unintended outcomes. Alternatively, to provide for more flexibility in permitting, the Service could adopt a more risk-tolerant approach.

The current management objective, also referred to as the “Eagle Act preservation standard,” is to manage populations consistent with the goal of maintaining stable or increasing breeding populations over 100 years, which is at least five eagle generations. The scale the Service uses to evaluate eagle populations is referred to as eagle management units. EMUs for the golden eagle were set at the Bird Conservation Region (BCR) level because the only range-wide estimates available for the golden eagles are BCR-scale population estimates. To establish management populations for bald eagles, we used natal populations (eagles within the natal dispersal range of each other) in our evaluation in order to look at distribution across the landscape. (Natal dispersal refers to the movement between hatching location and first breeding or potential breeding location.) Because the populations delineated by this approach roughly correspond to the Service’s Regional organizational

structure, we have been managing bald eagles based on populations within the eight Service Regions, with some shared populations. Estimates of bald and golden eagle population size in each EMU were calculated, and EMU-specific estimates of demographic rates were used in models to determine rates of authorized take that are compatible with maintaining stable breeding populations.

Under the current management approach, permitted take of bald eagles is capped at 5 percent estimated annual productivity for bald eagles. Because the Service lacked data to show that golden eagle populations could sustain any additional unmitigated mortality at that time, we set take thresholds for that species at zero for all regional populations. This means that any new authorized “take” of golden eagles must be at least equally offset by compensatory mitigation (specific conservation actions to replace or offset project-induced losses). For more details and explanation about the current eagle management approach, see the 2009 Final Environmental Assessment, Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act, which can be found at:

<http://www.fws.gov/migratorybirds/BaldAndGoldenEagleManagement.htm>.

The Service also developed and applies guidance on upper limits of take at more local scales to manage cumulative impacts to local populations. Under the guidance, the Service must assess take rates both for individual projects and for the cumulative effects of other human-caused take eagles, at the scale of the local-area eagle population. The local-area population is the population of eagles within the natal dispersal distance. The Service considers this distance to represent the geographic area that would provide recruits to replenish a local population if permitted take caused a decline in the breeding population of eagles around a permitted project. The Service identified take rates of between 1 and 5

percent of the total estimated local-area eagle population as significant, with 5 percent being at the upper end of what might be appropriate under the Eagle Act preservation standard, whether offset by compensatory mitigation or not.

The Service is considering a range of possible alternatives to the current management objective. At one end of the spectrum, we could adopt a qualitative objective such as “to not meaningfully impair the bald or golden eagle’s continued existence.” Alternatively, we could update the current management objective by incorporating newer, improved information on eagle movements, population size, and natal dispersal distances to revise the EMUs; set explicit numerical population objectives in each EMU; and refine the area we consider the local scale. We could also adopt an explicit level of risk tolerance relative to how much take to allow based on uncertainty in the population size estimates.

The scoping process announced today in this notice will inform our eagle management program and our decision to prepare either an EA or an Environmental Impact Statement EIS. Service staff who have been implementing the 2009 eagle permit regulations have identified a number of priority issues for evaluation during this scoping process, including the following: eagle population management objectives; programmatic permit conditions; compensatory mitigation; evaluation of the individual and cumulative effects of low-risk (or low-effect) permits; and criteria for nest removal permits. For more information about these topics visit <http://www.eaglescoping.org>. In addition to these topics, during this scoping process, we invite the public to provide input on any aspect of our eagle management program.

Analysis Under the National Environmental Policy Act

The NEPA analysis will evaluate the environmental effects of a range of alternatives for eagle management. We also intend the NEPA analysis to:

- Evaluate up-to-date information about the status of bald and golden eagle populations;
- Enable the Service to recalculate regional take thresholds for both species (if population management will continue to incorporate regional take thresholds);
- Analyze the effects of issuing permits to take golden eagles and bald eagles throughout the U.S.;
- Further analyze the effects of longer term nonpurposeful take permits; and
- Rigorously evaluate the effects of low-risk (low-effect) projects to allow for more efficient permitting at the individual project level.

The purpose of the public scoping process with regard to NEPA is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EA or EIS and related compliance efforts. Factors currently being considered for analysis in the EA or EIS include, but are not limited to:

1. The direct, indirect, and cumulative effects that implementation of any reasonable alternative could have on bald and golden eagles, migratory birds, other wildlife species, and their habitats;
2. Direct, indirect, and cumulative effects of projects that are likely to take a minimal number of eagles and as such can be classified as “low-risk” or “low effect” and for which permitting at the individual project level could be expedited;

3. Effects to cultural resources;
4. Potentially significant impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental/historical resources;
5. Strategies for avoiding, minimizing, and mitigating the impacts to eagles, migratory birds, wildlife, and other resources listed above;
6. Climate change effects; and
7. Any other environmental issues that should be considered with regard to potential alternatives for eagle management.

The final range of reasonable alternatives and mitigation to be analyzed in the draft EA or EIS will be determined in part by the comments received during the scoping process. The public will also have a chance to review and comment on the draft EA or EIS when it is available (a notice of availability will be published in the **Federal Register**).

Public Comments

We are requesting information from other interested government agencies, Native American Tribes, the scientific community, industry, nongovernmental organizations, and other interested parties.

You may submit your comments and materials by one of the methods described above under **ADDRESSES** at the beginning of this notice. Written comments will also be accepted at the public meetings, although these public meetings are primarily intended to provide additional information and provide a chance for the public to ask questions.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

References

U.S. Fish and Wildlife Service. 2009. Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act. U.S. Fish and Wildlife Service, Washington DC U.S.A.

Authority

The authorities for this action are the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Dated: _____ June 16, 2014 _____

Signed: _____

Jerome Ford

Assistant Director, Migratory Birds

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