

## **Questions & Answers on the Draft Environmental Assessment of Bald and Golden Eagle Take Permits**

The Service is seeking public comments on a draft environmental assessment of its proposed permit program for issuing permits under the Bald and Golden Eagle Protection Act when activities may disturb eagles, require nest removal, or result in the death of a bird. This assessment was prepared under the National Environmental Policy Act (NEPA), which requires federal agencies to evaluate the environmental impact of proposed actions and consider alternatives to those actions. The assessment addresses the permit program outlined by the Service in a proposed rule that was published in the *Federal Register* in June 2007.

### *Draft Environmental Assessment to Permit Take under the Eagle Act*

**Q. What is the relationship between the draft environmental assessment and the rulemaking?** A. The rule and the draft assessment are separate but related documents. “Rulemaking” is the process by which federal agencies promulgate regulations to implement decisions. An environmental assessment helps the agency consider the environmental aspects of its decisions, as well as involve the public in the decision-making process. The preferred alternative outlined in the environmental assessment will require the Service to amend the section of the Code of Federal Regulations that implements the Bald and Golden Eagle Protection Act. The Service follows the rulemaking process by issuing a proposed rule for public comment and publishing a draft environmental assessment. Once the comment period is closed and the Service considers the comments, the Service will publish a final rule and final environmental assessment and implement the decision.

**Q. What do you mean by saying some action may ‘take’ an eagle?** A: The Eagle Act defines the “take” of an eagle to include a broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” The majority of the take for which we intend this proposal to apply is “disturb.” By regulation, “disturb” means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

**Q: What alternatives are being considered by the Service in this draft environmental assessment?** A: The Service is considering three alternatives including a no-action scenario. If the Service chooses to take no action, a new permit would not be created and only those entities with agreements approved under the Endangered Species Act would be allowed to disturb or incidentally take eagles. If the Service chooses alternative two, the Service could issue a permit to remove a nest that threatened human or eagle safety, such as a nest near an airport, and could permit activities that could disturb an eagle, such as a loud construction site near an eagle nest. If the Service chooses alternative three, the Service could issue permits allowed in alternative two plus

permits that would allow certain, limited activities that may incidentally cause eagle mortality, called “non-purposeful take resulting in mortality.” This third option includes provisions that would enable Service biologists, Service law enforcement officers, and the permit applicant to work to minimize long-term impacts to eagles before a permit would be issued.

For example, through the partnership called the Avian Power Line Interaction Committee, electric utilities have developed common sense ways to set up power lines so they don’t electrocute eagles. Currently, even if a company works through these modifications and develops and implements a voluntary Avian Protection Plan or similar process, the Service cannot legally absolve the utility from liability under the Bald and Golden Eagle Protection Act.

Under the proposed permit program, in order to qualify for a permit, a company would be required to take certain actions such as (but not limited to): establishment of a mortality baseline through estimates or a sampling scheme; employment of the best-available techniques and mutually-approved standard practices for minimizing eagle mortalities; undertaking a system-wide risk analysis and retrofitting a significant portion of hazardous locations within a reasonable time frame; implementation of an effective monitoring program; reporting eagle mortality to the Service; use of only eagle-friendly practices on all new infrastructure; and a demonstration that the permittee has eliminated all avoidable eagle mortality. A company that fulfills the conditions of such a permit would not be subject to prosecution for any take that may occur despite its conservation efforts.

**Q: How will the Service ensure eagle populations continue to increase?** A: The draft environmental assessment lays the biological foundation for a proposed nationwide permit program. Under the preferred alternative, any authorized disturbance of eagles, removal of nests or activities that could result in eagle mortality despite all avoidance measures would be based on the eagle population of the area. Service regions will use biologically based models to determine how many permits can be issued in a given year and will use a structure for their allocation.

**Q: Are you going to allow people to kill that many eagles?** A: No. Most of the authorized take would not result in eagle mortality and would simply allow activities that might disturb eagles. For nesting eagles, this could mean one year of lost nesting opportunity or reduction in the number of young birds fledged from a nest. In addition, the permit would not authorize purposeful killing of eagles, but would only authorize mortality that results despite all efforts to avoid killing eagles.

**Q. Does the new regulation allow for the purposeful killing of large numbers of bald and golden eagles?** No. This permit does not create any new authorization for purposeful killing of eagles, nor does it allow the take of large numbers of eagles. The Service conducted a cumulative impact analysis including all eagle permits, and all future take permits will be subject to regional take thresholds to ensure that eagle populations can support any take we allow.

**Q: Why are the proposed thresholds so much higher than the take authorized in the past?** A: The proposed thresholds for bald eagles are higher than the amount of take authorized under the ESA because the bald eagle has recovered and been delisted, except for the Sonoran Desert population. The proposed thresholds for both eagles also are higher than the amount previously authorized under the Eagle Act, because the Service is now proposing to authorize take of eagles where the take is associated with, but is not the purpose of, the activity. Previously, authorization under the Eagle Act was limited to actions intending to purposefully take eagles. This is also the first time the Service has conducted a cumulative analysis of the ability of the eagle populations to support take from several permit types. The Service does not expect that, in most Service Regions, actual take will come close to the modeled thresholds. The Service needed to analyze those limits for the purposes of NEPA to demonstrate that the proposal would be compatible with increasing or stable eagle populations.

**Q: What do you mean by a “programmatic permit”, and why is this being proposed?** A: “Programmatic” has several meanings in the proposal. Primarily, we use the term to mean dealing with take from the same source in a consistent manner. The sources may be practices or facilities common to one or more industries or agency, e.g., road construction conducted by federal, state, tribal, and local transportation departments, or power lines and infrastructure installed by power companies of all sizes or other entities such as natural gas development companies. It can also refer to resource “programs” carried out by agencies at all levels, e.g., minerals, fire, and realty programs that conduct activities that may result in non-purposeful take of eagles. The entities conducting those “programs” may want to work with the Service to develop specific measures and standard practices to avoid and minimize take of eagles, with the goal of designing a permit for those “programs”. In addition, “programmatic” may refer to a permit that comprehensively addresses long-term or widespread take.

We are proposing a “programmatic” approach for many reasons. By developing standard practices applicable to broad sectors of an industry or multiple agencies, we improve the potential for consistent protection as well as consistent management of eagles. As proposed, the “programmatic” permits would also have additional measures, including the potential for compensatory mitigation for long-term reduction of mortality. In particular, the permit for programmatic reduction of take resulting in mortality is expressly intended to reduce take which currently affects the survival of eagles. If we can reduce this ongoing take in a programmatic fashion, we expect eagle populations to benefit.

**Q: How are the “take thresholds” being calculated?** A: We used a demographic population model to estimate the likely impact of permitted take at different levels on eagle populations over the long-term. The model helped us estimate the maximum number of individuals that could be taken annually under a given set of productivity and survival rate values without reducing the number of breeding eagles in the population in the future.

**Q: What rule is this draft assessment associated with?** A: On June 5, 2007 (72 FR 31142) (<http://www.fws.gov/policy/library/07-2697.pdf>), the Service proposed new regulations to establish new eagle take permits under the Eagle Act. The rulemaking was split into two rules to be finalized separately from one another. The original proposal to extend (or “grandfather”) Eagle Act take authorization to take previously authorized under the Endangered Species Act (ESA) was finalized first because it was categorically exempted from the requirements of NEPA. That final rule published on May 20, 2008 (73 FR 29075). The remainder of the provisions in the June 5, 2007 proposed rule comprise, with minor modifications, the action being analyzed under NEPA as the preferred alternative of the DEA.

### Tribal

**Q: Will this draft environmental assessment change how Native Americans acquire eagles and eagle parts from the National Eagle Repository?** A: No. This draft assessment does not affect the process that tribal members use to obtain eagle carcasses and eagle parts from the National Eagle Repository. Bald eagles and golden eagles remain protected by the Bald and Golden Eagle Protection Act, which prohibits the possession of eagles and eagle parts without a permit. State and tribal wildlife management agencies should continue remitting all collected eagle parts and bodies to the National Eagle Repository.

**Q: Will this assessment change the way tribes get a permit to take a bald or golden eagle for religious purposes?** A: No. But the preferred alternative would include issuance criteria to ensure that Native Americans seeking permits to take eagles for religious purposes are given priority over all those seeking permits for other types of activities that might “take” eagles, except for emergencies involving human safety. Other than this issuance criterion, the assessment does not include new provisions for take for religious purposes by tribes. The Eagle Act recognizes the importance of eagles to Native Americans by authorizing the Service to issue permits allowing take for the “religious purposes...of tribes” when compatible with conservation. The American Indian Religious Freedom Act makes it the policy of the U.S. government to “protect and preserve” the right of Native Americans “to believe, express and exercise ... traditional religions.”

**Q: Although the proposal says that priority will be given for Native American religious take, isn’t there a risk the entire take will actually go to companies for “programmatically permits”?** A: No, not under either type of programmatic take (disturbance or take resulting in mortality). Depending upon site-specific conditions and the determination of the Service, take permitted in programmatic disturbance permits that would lead to reductions in disturbance may not need to be subtracted from the calculated take thresholds. If it is determined that the predicted disturbance take would result in a cumulative loss to the eagle population, the programmatic disturbance permits would be subject to take thresholds and the annual allocation process, and would not be considered a priority take. The permit for programmatic reduction or minimization of take resulting in mortality (TRM) would initially reduce ongoing lethal take from certain types of activities or programs where the take affects the survival of eagles and is reflected in survival ratios of population models. Therefore, take permitted in programmatic TRM

permits leading to reductions in mortality would not affect other take of eagles. Programmatic permits for new and expanded activities may be subject to take thresholds and the annual allocation process if it is determined that the predicted take, even where reduced to the point where it is unavoidable, would result in a cumulative loss to the eagle population. Upon that determination, the permits would be subject to the allocation system as described in the draft environmental assessment, designed to ensure that authorized take of birds necessary to meet the religious need of a Native American Tribe would not be denied due to other take being authorized for another purpose.

#### Laws that Protect Eagles

**Q: What laws protect bald eagles and golden eagles?** A: Bald eagles and golden eagles are protected by two major federal laws -- the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. In addition, state governments can enact state laws that afford more protection than federal laws to conserve wildlife species. Please contact your state fish and wildlife agency to see if your state has laws or management guidelines applicable to eagles. Please see <<http://www.fws.gov/offices/statelinks.html>> for state or territorial wildlife agencies' contact information. The Sonoran Desert bald eagle population remains protected by the Endangered Species Act.

**Q: How does the Bald and Golden Eagle Protection Act (Eagle Act) protect eagles?**

A: The Eagle Act, originally passed in 1940, prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. "Take" is defined as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" a bald or golden eagle. The term "disturb" under the Eagle Act was recently defined via a rule published in the *Federal Register* on June 5, 2007. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

**Q: What are the protections provided by the Migratory Bird Treaty Act?** A: Under the Migratory Bird Treaty Act, it is illegal to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, or import, cause to be shipped, exported or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried or received for shipment, transportation, carriage or export, any migratory birds (including eagles), their parts, nests or eggs, whether or not manufactured except as permitted by regulation. "Take" is defined under the implementing regulations as "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect". Examples of activities allowed by regulation include hunting waterfowl during season with a valid hunting license and Federal Duck Stamp; collecting migratory birds for scientific purposes with a Service-issued scientific collection permit; and possession of migratory birds with a Service-issued taxidermy permit.

### Penalties

**Q: What are the penalties associated with violating the two federal laws that protect eagles?**

A: Under the Bald and Golden Eagle Protection Act, which, among other things, prohibits take and sale, the first criminal offense is a misdemeanor with a maximum penalty of one year in prison and \$100,000 fine for an individual (\$200,000 for an organization). The second offense becomes a felony with a maximum penalty of 2 years in prison and \$250,000 fine for an individual (\$500,000 for an “organization” such as a business). The Bald and Golden Eagle Protection Act also provides for maximum civil penalties of \$5,000 for each violation.

Under the Migratory Bird Treaty Act, which prohibits, among other things, take and sale of listed birds including eagles, take alone is a misdemeanor violation with a maximum penalty of six months in prison and \$15,000 fine, and commercialization is a felony violation with a maximum penalty of two years imprisonment and \$250,000 fine (\$500,000 for an organization).

**Q: How has the Bald and Golden Eagle Protection Act been used to convict recent violators?**

A: A West Virginia man was convicted in federal court for killing a bald eagle and sentenced to serve six days in federal prison, 11 months and 26 days of home confinement, and five years supervised probation; he also had to forfeit the rifle used to kill the eagle and pay \$3,301 in jail and court fees.

A Florida land development company responsible for the destruction of an eagle nest tree on property where it was building a housing development in Collier County, Florida, pleaded guilty to violating the Bald and Golden Eagle Protection Act and was fined \$356,125 – one of the largest penalties ever assessed under this statute. An individual associated with the company also pleaded guilty to violating the Eagle Act and was sentenced in April 2006 to a \$5,000 fine and three years on probation.

Two defendants who cut down a tree containing a bald eagle nest in Sarasota County, Florida, pleaded guilty to violating the Bald and Golden Eagle Protection Act. One defendant was ordered to pay a \$10,000 fine and contribute \$80,000 in restitution (\$40,000 to the Audubon Center for Birds of Prey and \$40,000 to the National Fish and Wildlife Foundation’s Florida Bald Eagle Conservation Fund). The other was fined \$10,000 and ordered to forfeit the chainsaw used to commit the crime.

Two individuals in South Dakota who shot a golden eagle and other migratory birds were convicted of violating the Eagle Act. Lab analysis showed that the eagle had been shot twice. The defendants were ordered to pay \$3,000 in restitution; serve 30 days in prison; spend a year on probation while banned from hunting; and forfeit the rifles used in the shootings.

In Wyoming, an oil and gas company pleaded guilty under the Eagle Act to electrocuting golden eagles. The company was fined \$10,000 and ordered to pay \$10,000 in restitution. The company has also developed an Avian Protection Plan and spent approximately \$988,000 retrofitting power-lines serving the oil field where the electrocutions occurred.

### Eagle Act Guidelines

**Q: What are the National Bald Eagle Management Guidelines and why are they important?** A: The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the Eagle Act may apply to their activities. The Guidelines include general recommendations for land management practices that will benefit bald eagles; however, the document is intended primarily as a tool to provide those who seek information and recommendations regarding how to avoid disturbing bald eagles. Adherence to the Guidelines will benefit individuals, agencies, organizations and companies by helping them avoid violations of the law. However, the Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles. The Service intends to update these guidelines as more information becomes available.

**Q: Does the Service have management guidelines for golden eagles?** A: The Service is working on guidelines for managing raptor populations (including golden eagles) in the western areas of the United States, and also plans to develop specific guidelines for golden eagles in the future.

**Q: Are inactive eagle nests protected under the Bald and Golden Eagle Protection Act?** A: Yes. The Bald and Golden Eagle Protection Act prohibits take of any eagle nest, whether active or inactive. Therefore, a permit would be needed to remove an active or inactive eagle nest.

**Q: How did the Service handle bald eagle permits issued under the Endangered Species Act?** A: Before the Service removed the bald eagle from protections under the Endangered Species Act on August 8, 2007, landowners and other federal agencies could enter into agreements with the Service to conserve bald eagles. Under these agreements, if the landowners agreed to certain land management provisions, the Service issued them a permit shielding them from liability if an eagle was incidentally harmed or killed. This successful conservation model helped the Service work with private landowners and other federal agencies to avoid violating the law and encourage activities that ultimately help eagles.

**Q: What types of entities are eligible to apply for the new permits?** A: Individuals, organizations, businesses, tribes, and local, state and federal government agencies would be eligible to apply for the new permits.

**Q: Will nest removal permits be available when there is no immediate safety emergency either for people or eagles? (For ex. Individual Transportation projects for which funds have been allocated and completion is time-sensitive.)** A: Under the preferred alternative, when other criteria are met (e.g., the take will be compatible with the preservation of eagles), nest removal would be an option where it is necessary to protect the public welfare. This is modified from what we proposed in the June 5, 2007 proposed rule, which limited nest removal to immediate safety emergencies. Depending on information we receive through public comments on the draft environmental

assessment, we may further expand the purposes for which nests could be removed, or we may narrow them due to the relative biological significance of nests versus individual birds.

**Q: Will programmatic permits be available for routine activities likely to affect eagles at nesting, roosting or foraging areas?** A: Yes, a programmatic permit for these types of routine activities would be available under the preferred alternative.

For more information on bald eagles and golden eagles, please see <  
<http://www.fws.gov/migratorybirds/baldeagle.htm>>.