

## **Changes in the Regulations Governing Eagle Permitting**

### **Questions and Answers**

#### **What is the Service proposing?**

The Service is proposing to revise the regulations governing permits for take of Golden Eagles (*Aquila chrysaetos*) and Bald Eagles (*Haliaeetus leucocephalus*), where the take is associated with, but not the purpose of, an activity. The Service proposes to extend the maximum term for programmatic permits from five to 30 years, if the permit incorporates conditions requiring implementation of additional measures to ensure the preservation of eagles if needed. This change will facilitate the responsible development of renewable energy and other projects that will be in operation for many decades while being consistent with statutory mandates protecting eagles. This rule would also substantially increase the fees charged for such programmatic permits in order to ensure that the Service recovers costs associated with issuing and monitoring the permit over its lifetime.

#### **What protections does the Bald and Golden Eagle Protection Act provide?**

The Bald and Golden Eagle Protection Act (BGEPA) is the primary law protecting eagles from “take,” where take is defined as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb individuals, their nests and eggs. “Disturb” was defined by regulation in 2007 as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause ...injury to an eagle, a decrease in its productivity..., or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.”

#### **What is a programmatic permit?**

Programmatic permits authorize recurring take that is unavoidable even after implementation of advanced conservation practices. “Programmatic take” is defined 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.” Programmatic permits can be issued 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” (ACPs) are defined 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 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.

### **What types of projects would need a programmatic permit?**

We anticipate issuing programmatic permits for wind, solar, and other energy projects, as well as electric utilities, timber operations, and others. We expect that most oil and gas operations are better able to take measures to prevent ongoing eagle mortalities, so we do not expect many will need to seek permits. However, permits may be issued to any type of entity that cannot avoid taking eagles.

### **Why were the 2009 regulations implemented?**

While the Bald Eagle was protected under the Endangered Species Act (ESA), take of bald eagles incidental to an otherwise lawful activity was managed through the ESA’s incidental take permit process. When the Bald Eagle was recovered and removed from the Endangered Species List in 2007, no regulations existed under the Bald and Golden Eagle Protection Act to allow disturbance and other incidental take of either species of eagle. As a result, the Service developed these regulations to provide permits for activities or projects that result in such take.

### **Why do the 2009 regulations need to be changed?**

Since publication of the 2009 final rule, the Service has been approached by numerous proponents of renewable energy projects, such as wind and solar power facilities, interested in obtaining programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. It has become evident that the 5-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) is not long enough to enable many such project proponents to secure the funding, lease agreements, and other necessary assurances to move forward with their projects. To address this problem, the

Service proposes to amend the regulations to provide for terms of up to 30 years for programmatic permits.

**How will the Service ensure adequate protection for eagles over 30 years?**

The proposed changes will enable the Service to incorporate judiciously-developed, adaptive conservation measures the permit holder will be required to implement in the event that take exceeds predicted levels, or if new information indicates that such measures are necessary to protect eagles. Permits for periods longer than 5 years would be available only to applicants who commit to implementing such adaptive measures, if monitoring shows that the measures are both needed and likely to be effective. Any such required “adaptive management measures” would be negotiated with the permittee and specified in the terms and conditions of the permit. The Service has also proposed to increase permit fees to ensure adequate funding for monitoring and additional amendments that may be needed over the life of the permit.

**What changes to the fee structure are being proposed rule changes?**

This proposed rule would amend the schedule of permit fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for programmatic permits authorizing the incidental take of Bald or Golden Eagles. Current regulations set the fee for such permits at \$500 in the case of standard permits and \$1,000 in the case of programmatic permits. Fees for renewal of such permits are \$150 and \$500, respectively. Experience to date has demonstrated that these fee amounts are significantly less than the actual cost to the Service of reviewing and processing programmatic permit applications, including the costs of monitoring the implementation of such permits. In particular this may be the case for programmatic permits that authorize the taking of eagles over a decade or more.

The permit application processing fee is proposed to be \$36,000. In addition, the regulations propose an “administration fee” based on the duration of the permits to recover the Service costs for monitoring and working with the permittees over the lives of the permits. The proposed administration fee ranges from \$2,600 for permits with tenures of 5 years or less to \$15,600 for 30-year permits. The regulations propose a reduced application processing fee of

\$5,000 for permit applications for small wind projects and other activities not expected to have significant effects on eagles.

If take is likely to occur over the life of the project, but the overall impact to eagles is expected to be small a permit is still necessary to avoid violating the Eagle Act. However, the Service is proposing a significantly smaller application processing fee increase for such projects. The application processing fee for such programmatic, small-impact projects is proposed to be \$5,000 and there would be no administration fee for these permits.

### **Would long-term permits issued under the proposed regulations be transferable?**

This proposed rule would allow the transfer of permits without the need to issue a new permit in the event of sale of a permitted facility to a new owner. Similarly, the holder of a permit authorizing multiple new facilities in a given area could transfer that permit in part to the owner of a particular qualifying new facility. A second proposed provision would provide clarity that Eagle Act programmatic permits issued to Federal, State, Tribal, or local governmental entities provide take authorization for persons acting under the jurisdiction of the permitted government agency.

### **How should comments be submitted?**

Comments and supporting materials may be submitted by one of these two methods:

- *Federal eRulemaking portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0054.
- *U.S. mail or hand delivery*: Public Comments Processing, Attention: FWS–R9–MB–2011–0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but there is no guarantee that information will be withheld. All hardcopy comments will be posted on <http://www.regulations.gov>.

The Service will not consider comments sent by e-mail or fax, or written comments sent to an address other than the one listed.