



FINDING OF NO SIGNIFICANT IMPACT

Eagle Permits; Take Necessary to Protect Interests in a Particular Locality

The U.S. Fish and Wildlife Service is proposing to initially issue a very conservative number of permits to allow disturbance or take of nesting, roosting, or feeding activities of bald eagles (*Haliaeetus leucocephalus*) in the United States. Until we have additional data to show that populations of golden eagles (*Aquila chrysaetos*) can withstand additional take, of those permits authorized under the new rule, we will only consider permits for safety emergencies, programmatic permits, and any other permits that will result in a reduction of ongoing take or a net take of zero. We will continue to issue historically-authorized take permits under existing permit types at the level of take carried out under those permits (average over 2002-2007). We would issue permits based on the best-available information on population size and vital rates for the two species.

The Division of Migratory Bird Management has prepared an Environmental Assessment under the National Environmental Policy Act to analyze alternatives associated with the new permit regulations. In the EA, the Division considered three alternatives for managing take under the Bald and Golden Eagle Protection Act.

Under **Alternative 1**, we would finalize regulations to extend Eagle Act authorization to bald eagle take that is authorized under the Endangered Species Act, but we would not promulgate the further regulations to authorize take that is associated with, but not the purpose of, an action, or to authorize nest removal to protect safety and public welfare.

Under **Alternative 2**, we would promulgate regulations to authorize take that is associated with, but not the purpose of, an action. However, the permits would be limited to disturbance; no other forms of take would be authorized. We could authorize programmatic disturbance and nest take if the permittee implements advanced conservation practices (See Management Common to Both Action Alternatives for definitions). Because Alternative 3 is the proposed alternative, for ease of explanation and understanding, the measures common to Alternative 2 and Alternative 3 are outlined in the first part of the discussion for Alternative 3.

Alternative 3 is the proposed action. This alternative includes all elements of Alternative 2, with the additional authorization of take that results in mortality.

Provisions in both Alternative 2 and Alternative 3: Under both Alternative 2 and Alternative 3 (the action alternatives), our standard for issuance of permits would be to issue no more permits than we determine would be consistent with increasing or stable regional breeding populations of the two species. The rule would include issuance criteria to ensure that, except for safety emergencies, Native American religious needs are given first priority if requests for permits exceed take thresholds that are compatible with the preservation of the bald eagle or the golden eagle. The rule would have separate provisions for programmatic take versus individual instances of take. Programmatic take (take that is recurring and not in a specific, identifiable timeframe and/or location) would be authorized only where it is unavoidable despite implementation of comprehensive measures ("advanced conservation practices") developed in cooperation with the Service to reduce the take below current levels. "Advanced conservation practices" means scientifically-supportable measures representing the best-available techniques designed to reduce disturbance and ongoing mortalities to a level at which remaining take is unavoidable.

The assessment summarizes the biological foundation for defining take thresholds for bald eagles and golden eagles. Under the action alternatives, the Service will define thresholds for take by adapting a published model used in other recent raptor regulations. The thresholds will guide annual take limits to ensure that we are consistent with the goal of stable or increasing breeding populations.

The majority of authorized take under the action alternatives will simply allow activities to disturb eagles in a way that might result in a loss of one year's productivity by a nesting pair. On-the-ground information and conditions will guide the amount of take authorized, which may be less than modeled, as long as the total does not exceed the modeled thresholds.

The action alternatives would allow eagle nests to be taken where necessary to protect public health and welfare. Permits to intentionally remove nests or haze would be authorized under the authority of § 22.23 (Depredating permits), which will be amended to clarify its application to the protection of health and safety of both humans and eagles as well as to depredating eagles. Nest removal for emergencies would be retained, and would authorize the removal and/or relocation of active and inactive nests where genuine safety concerns necessitate their removal. The broader application would allow us to issue permits to remove only inactive nests in some circumstances where the presence of the nest does not immediately threaten injury or loss of life, but does interfere with maintenance or expansion of infrastructure needed to protect overall public health and welfare.

Except for safety emergencies (a situation presenting an immediate threat of bodily harm to humans or eagles), the rule will give priority in permitting to Native American use for rites and ceremonies that require eagles taken from the wild if requests for permits will likely approach the annual threshold. The next permit priorities will be for renewal of

programmatic nest-take permits, non-emergency activities necessary to ensure public health and safety, and (for inactive golden eagle nests only) resource development or recovery operations (§ 22.25).

In situations in which the take of an inactive nest (a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present) is necessary to protect public health and welfare, but not to alleviate an immediate threat to safety, two additional criteria would have to be met before we would issue a nest take permit under this section. First, we would not issue the permit unless alternative, suitable nesting and foraging habitats are available. Second, the permittee will be required to mitigate for the detrimental impacts to eagles to the fullest extent practicable. In addition, the definition of an inactive nest is intended to be applied only to questions of whether or not a nest may be taken with reduced risk of associated take of birds. It is not intended to convey any other biological status, nor will it be the only criterion for permit evaluation.

Alternative 3 includes measures in addition to those of Alternative 2: It would provide for permits for take resulting in mortality (TRM of bald eagles and golden eagles) in some limited circumstances where the take is associated with, but not the purpose of, the activity. The primary purposes of Alternative 3 are to reduce the ongoing occurrences of unauthorized and unregulated mortality contributing to eagle losses (currently affecting survival ratios in the population modeling) and to ensure that any authorized, programmatic TRM also include measures to reduce long-term risk of take.

The Service will evaluate permit applications for all permit types to determine whether, during the process of developing an activity, use of the eagle-management documents and other methods for avoiding and minimizing the potential for take will be employed. Any requests for permits will need to cite these measures in their supporting documentation. However, in Alternative 3, in addition to measures to avoid disturbance take as noted in the eagle-management documents, siting to avoid lethal take needs to take into greater consideration such life-history components as dispersal, migration, winter-concentration behavior, and foraging behavior during breeding and non-breeding seasons. When evaluating requests for TRM permits (especially if programmatic in scope), the Service will first assess whether the proposal includes avoidance of migration corridors, winter-concentration areas, and home ranges during breeding and non-breeding seasons.

Alternative 3 was chosen over the other alternatives because the provisions in this alternative for programmatic permits to reduce TRM provide an important mechanism to reduce lethal take for both species of eagles, and to improve conditions for golden eagle populations. Without measures for programmatic reduction in TRM as contained in Alternative 3, our actions may not be compatible with the preservation of the golden eagle.

We expect implementation of this rule to result in the following environmental, social, and economic effects:

- Because the Service will review take thresholds on a regular basis (at least once every five years) relative to eagle population and demographic parameters, the Service will be able to modify or adjust permitting accordingly. In addition, the Service will adopt conservative assumptions (estimating take by survival rather than productivity) and application (setting a limit consistent with Millsap and Allen (2006)) of the model used to estimate take thresholds to account for inherent uncertainties and limitations of surveys and monitoring efforts. The periodic review and conservative approach to thresholds will mitigate the cumulative effects to eagle populations from the proposal and other reasonably-foreseeable activities conducted by other entities.
- In some regions of the country, particularly in the Southwest, cumulative effects from the proposed permit to eagles and habitat from all types of development and climate change may result in local population declines. Because the Service will review take thresholds on a regular basis relative to eagle population and demographic parameters, the Service will modify or adjust permitting accordingly. This will have some negative impacts on local religious and cultural resources. However, we do not expect significant cumulative effects to religious and cultural resources from the proposal.
- The provision for programmatic take would potentially minimize economic impacts by allowing more actions to take place without reaching the take thresholds. This alternative will provide a mechanism by which industries and agencies could implement practices to reduce ongoing eagle mortality, thus demonstrating their commitment to improving conditions for eagles. This will create additional costs, but those costs will be balanced by regulatory certainty that comes with knowing they are not subject to enforcement proceedings, and may not be significant. Initially, until data indicates the population can support take, projects seeking individual permits for take of golden eagles (above baseline levels) would not receive them, and would experience locally adverse impacts. However, permits for programmatic disturbance, or programmatic permits to reduce take resulting in mortality would be available, if the standard practices adopted as permit conditions will result in a net reduction in take or a net take of zero, and no net loss to the breeding population. In addition, historically, there has been little enforcement of activities disturbing golden eagles, and many projects proceeded regardless. The effects of the proposal may therefore appear greater to previously little-regulated industries and

agencies. For the preceding reasons, the Service expects no impacts deleterious to any sectors of the national economy from this alternative.

The Service has incorporated additional measures into the final proposal in order to mitigate and/or minimize potential adverse effects to religious, cultural, and biological resources. As a response to comments received on the DEA and proposed rule, we will develop and implement two improvements in coordination and consultation, to be initiated in implementation guidance for this proposal. As we provided in *2.6.4.2 Improved Implementation of Service Trust Responsibilities to Tribes*, the implementation guidance will contain guidelines for the Division of Migratory Bird Management on how to better implement government-to-government consultation with Tribes, to which we have committed in this permit program.

In addition, the implementation guidance will contain provisions for structured coordination between the Service and State and Tribal wildlife jurisdictional agencies, using the provisions and elements in *2.6.4.1 Structured-Coordination Process with State and Tribal Wildlife Jurisdictional Entities*. The coordination structure will be used to identify specific regions, such as the Chesapeake Bay, that are critical to the maintenance of the continental bald eagle population, and other locations important to the long-term health of the golden eagle population. Enhanced coordination will help to identify critical foraging, roosting, and concentration areas, and will also facilitate modification of take thresholds on a localized scale, as conditions warrant. We intend to actively seek the assistance of States and tribes as we develop the guidance, which will undergo public review and comment.

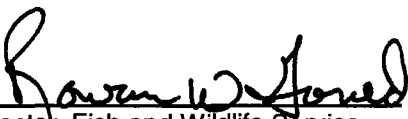
Furthermore, we will initiate efforts to develop a national golden eagle-specific conservation and management plan to include, but not be limited to, all of the plan components discussed in *2.6.4.3 Identified Goals for Improved Ability to Manage Eagle Populations and the Permit Program*.

I have reviewed the Environmental Assessment and other supporting documentation. I have determined that, because the criteria for issuance of permits would initially limit their issuance to only 5% of the Maximum Sustainable Yield (MSY) for bald eagles, the preferred alternative, Alternative 3, contains limits falling within the recommendations in published literature for take of raptors where population monitoring may be limited or there are concerns about the vital rates for a species. The best-available data we have for golden eagles indicate modest declines in the four BCRs that constitute 80 percent of its range in the lower 48 states, and golden eagle data for Alaska have prompted suggestions that conservation strategies for migratory golden eagles require a continental approach. Therefore, I have also determined that, until we have additional data to show that golden eagle populations can withstand additional take, we will only consider issuance of permits for safety emergencies, programmatic permits, and any other permits that will result in a reduction of ongoing take or a net take of zero. We will

continue to issue historically-authorized take permits under existing permit types at the level of take carried out under those permits (average over 2002-2007). Should golden eagle populations stabilize sufficiently to allow annual take, the Service will calculate take limits as a percentage of MSY consistent with the methodology used to determine the appropriate limits for bald eagles described above. Though we know more about these values for bald eagles and for golden eagles than we do for many other species, the conservative limits on permit issuance will protect the populations of both species. In addition, we expect that implementation of the programmatic type permits, with goals of net reduction in take or a net take of zero, and no net loss to the breeding population, will result in a long-term reduction in ongoing take that will offset some of the new allowed annual take for individual permits. The Environmental Assessment also provides measures to adaptively manage permits within a structured-coordination process, which will allow greater or lesser take thresholds as more comprehensive information becomes available. For example, if, in the future, we have data to show that golden eagle populations can withstand additional take, we would authorize take on an individual permit basis, as long as the take is compatible with the preservation of the golden eagle.

With conservative limits in place, the promulgation of regulations providing for issuance of disturb and take permits for bald eagles and for golden eagles under the preferred alternative is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

Dated: May 19, 2009

Signed: 
Director, Fish and Wildlife Service

Reference: Whittington, D. M., G. T. Allen, and B. A. Millsap. 2008. Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act. Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington, Virginia.