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U.S. Fish and Wildlife Service
Public Comments Processing
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5275 Leesburg Pike
Falls Church, VA 22041–3803

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The Ornithological Council appreciates the opportunity to comment on the proposed revision of the permits for the non-purposeful take of Bald Eagles and Golden Eagles and commends the U.S. Fish and Wildlife Service for their intention to increase the number of projects with Bald and Golden Eagle Protection Act permits and produce more conservation benefits for eagles.

The Ornithological Council is a consortium of scientific societies of ornithologists; these societies span the Western Hemisphere and the research conducted by their members spans the globe. Their cumulative expertise comprises the knowledge that is fundamental and essential to science-based bird conservation and management.

The U.S. Fish and Wildlife Service (USFWS) is proposing substantial revisions to regulations implementing the Bald and Golden Eagle Protection Act, with the intent of improving the efficiency and effectiveness of eagle take permitting. The proposed regulatory scheme includes a general permit option for wind energy facilities, power line entities, activities with the potential to disturb eagles, and nest removal activities. Individual specific permits would also be available for those entities that do not wish to apply for a general permit, and would be required for any applicant whose project or activity does not qualify for a general permit. The Ornithological Council supports the development of this permitting scheme and offers the following brief comments and suggestions for the agency to consider as it moves toward finalizing the rule.

Independent or third-party monitoring

The previous rule, promulgated in 2016, regarding incidental take permits for eagles included a requirement that independent third parties would conduct monitoring on all long-term permits for incidental take of eagles. In light of the difficulties of implementing and enforcing this requirement, the agency proposes removing this requirement in the new rule. Instead, USFWS “propose[s] that project proponents must train relevant employees to recognize and report eagle take as part of their regular duties. This monitoring requirement includes visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at and around project infrastructure.”

Rather than require independent monitoring, the agency chooses to rely the provision in the existing regulations that requires that permit recipients certify that the information submitted to the agency in applying for or complying with their permit is complete and accurate to the best of their knowledge, subject to criminal penalty. The agency “anticipate[s] reference to this criminal provision will ensure that permittees provide the Service with accurate monitoring information without the need to require third-party monitoring.” The Ornithological Council has concerns about the proposal to eliminate independent monitoring and to instead rely on permittees to self-report eagle deaths.

Self-monitoring is inherently unreliable and subject to gross under-reporting, and the USFWS does not have the capacity to adequately enforce reporting requirements. The Ornithological Council has raised this issue with the agency before, in regard to the Double-crested Cormorant depredation orders. In that case, we suggested that the USFWS lacked capacity to monitor adequately and that proved to be the case. Records provided to the Ornithological Council in response to a FOIA request showed that the surveys were not sent to all aquaculture facilities and there was little follow-up on the facilities that failed to respond to the surveys.

In Arkansas, for instance, only 35% of those surveyed returned the requested information. As Arkansas was, at the time, second in aquaculture-producing states, this under-reporting meant that the USFWS was lacking a substantial amount of information about the extent of the take under the aquaculture depredation order. No state exceeded a 63% reporting rate and three were at 25% or lower. Given current staffing levels at the USFWS and the number of entities eligible for eagle permits, it is hard to imagine that the agency will be able to effectively enforce reporting requirements, even in light of the criminal penalties of non-compliance.

The threat of permit suspension *might* motivate prompt reporting of eagle deaths in some cases, but the permittees would still have a strong incentive to under-report eagles injuries and deaths. We believe that independent monitoring is essential and that the cost should be borne by the permittee. Monitors should be qualified biologists who are trained in a standard methodology that has been peer-reviewed and field-tested. The permit could provide that the extent of

monitoring be appropriate to the particular site and season (i.e., to the likelihood of take as indicated by the abundance of eagles in the area). It might also provide for a reduction in the level of monitoring over time, should it prove that few eagles are in the area and that the extent of take is not of concern.

We also note that the monitoring of mortality resulting from wind turbines is not a simple matter. The “throw distance” can be considerable, even large carcasses can be scavenged quickly, and it can be difficult to determine how many birds may have been killed if only feathers are found. Standard methodology following recommendations in recent peer-reviewed, ground-tested research, including time and frequency of surveys, variation in observer detection, correction factors, and other particulars, must be employed in order to assure reliability of results and comparability of results across sites and over time.

If reverting to third party monitoring is not possible, perhaps a hybrid could be developed whereby an independent monitor trains the workers on reporting and checks the facility regularly to determine the effectiveness of self-monitoring. The USFWS-developed and administered online training tool suggested by the Atlantic Flyway Council in their written comments could also help to increase the reliability of self-monitoring and reporting.

The elimination of third party monitoring, combined with the elimination of mandatory reviews every 5 years of long-term permits, means that the agency may not be able to successfully determine the activity’s long-term impacts on eagles. Under the new proposal, the burden has shifted to other entities, such as Tribes, States, and the general public, to reach out to the USFWS with concerns about compliance with permit terms at a particular project or new information that may bear on the conditions of a permit, which may prompt the agency to initiate a permit review. We would argue that the burden should be on the permittees, by securing independent monitoring, and the USFWS, by regularly reviewing permit compliance.

Salvage

Under the proposal, eagles must be disposed of in accordance with USFWS instructions, which may include shipping eagles to the National Eagle Repository or other designated facility, or to a Tribe. We would encourage that the permit conditions should provide that all carcasses and bird parts *must* be collected and preserved according to established protocols. All carcasses and parts that are not needed by the USFWS for law enforcement purposes or for the National Eagle repository, or by Tribes, should be offered to museums and ornithologists for research.

Access to property for USFWS personnel

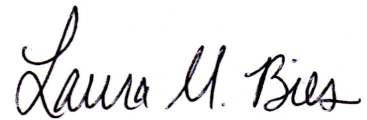
For wind energy general permits, the proposal calls for permittees to allow systematic monitoring at their project sites by USFWS staff or contractors, with the logistics of access to project sites to be negotiated with the permittee. We encourage the agency to structure the permit conditions for all general permits — not just wind energy permits — to provide the ability for the USFWS or its contractor to have guaranteed access to properties as needed.

Access to property and data for research

Permit conditions should encourage access for researchers to study the effects of their projects on all migrator birds, not just eagles. Some wind energy facilities may cause substantial avian mortality, and access for research can be difficult to secure. A better understanding of avian mortality and the behavioral changes associated with wind turbines, would benefit the agency, the permit holder, and the birds themselves.

We value our partnership with the U.S. Fish and Wildlife Service. Thank you in advance for considering our views.

Sincerely,

A handwritten signature in black ink that reads "Laura M. Bies". The signature is written in a cursive, flowing style.

Laura M. Bies
Executive Director