



The Western Section of The Wildlife Society and Wildlife Research Institute

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Symposium
Sponsors



February 8 – 02:40-02:55 pm Session: Department of Interior Eagle Session

Final Rule, Final Environmental Assessment and Current Anticipated Route for Permit Applications and Take Limitations

Joel Pagel, USFWS, Carlsbad, CA and Diana Whittington, National Raptor Lead, USFWS, Division of Migratory Bird Management; 4401 N. Fairfax Drive, MBSP 4107, Arlington, VA 22203; (703) 358-2010; Diana_Whittington@fws.gov

In 2009, the US Fish and Wildlife Service released the Final Rule and Environmental Assessment for the Bald and Golden Eagle Act; a permit for take as provided under the Bald and Golden Eagle Protection Act. At the time, the USFWS recognized that Golden Eagle population trends in North America were little known, however what data existed indicated a decline. To acknowledge the concern of population loss throughout the range of the species, and recognizing the importance of eagles as religious symbols for Native American Tribes, the USFWS developed a 'no-net loss' approach to conserve the breeding population. Two types of permits were proposed by the rule; 50 CFR 22.26, authorizing limited take where it could not be practicably avoided, and 50 CFR 22.27 for the intentional take of eagle nests for emergency and other limited purposes.

The authors and institutions that have provided the following presentations are happy to share their information, data, and opinions. However, these are not, necessarily, peer-reviewed presentations and the potential to take something out of context also exists. In order to avoid that, you are requested to contact the respective lead author(s) before using specific information contained in any of the following papers. Once you have done that, the proper citation is: "[Author(s). Date. Title.] Presented at the Western Raptor Symposium. Jeffrey L. Lincer and David Bittner (Co-Chairs). Hosted by Wildlife Research Institute and The Wildlife Society, Western Section. Riverside Convention center, Riverside, California, USA. February 8-9, 2011

Eagle Act Permits



Division of Migratory Bird Management
4401 N. Fairfax Drive, MBSP 4107
U.S. Fish and Wildlife Service
Arlington VA U.S.A.
Diana Whittington/Jeep Pagel

Please contact:
Diana_Whittington@fws.gov



Background on the Eagle Act:

Take Definitions



- **Take** - pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb
- **Disturb** - to agitate or bother a Bald or Golden eagle to a degree that causes, or likely to cause, based on best scientific information
 - injury to an eagle
 - decrease in productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior
 - nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior

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Two New Permits Established in 2009



- Permit for limited take, where the taking is associated with, but not the purpose of the activity, and cannot practicably be avoided - “incidental take”
- Permit for intentional take of eagle nests:
 - To alleviate safety hazard to people or eagles
 - To ensure public health and safety
 - When nest prevents use of human-engineered structure
 - When the activity, or mitigation for the activity, will provide a net benefit to eagles

Only inactive nests allowed to be taken except in safety emergencies

Decision for Golden Eagle



NEPA on the Rule **recognized broad uncertainties**

At present: Until additional data show populations of Golden Eagles can withstand additional take, permits will be considered only for

- safety emergencies
- programmatic permits
- other permits that **reduce ongoing take** or **result in no net loss** to the breeding population
- The importance of a rigorous Golden Eagle Conservation Plan cannot be underemphasized.

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Conservation Perspectives of the Eagle Act and Rule



- Eagle Act - take will be authorized **only** where it is “compatible with the preservation of the eagle”
 - Rule defined as “consistent with the goal of increasing or stable breeding populations”
- In other words, we are not managing eagles to the point they need to be listed under the Endangered Species Act (ESA), but for **preservation**



Recognition of Cultural Significance



- The Rule recognized eagles are important to Tribes.
- Thus, eagle nests and other areas where eagles are present may be considered to be sacred sites by some Tribes and Tribal members
 - Nest territories
 - Landform or landscape known for eagle presence (breeding and non-breeding) (e.g. a ridgeline, canyon, lakeshore, river valley, mesa, mountain)
 - Potential historic properties of religious and cultural importance under the National Historic Preservation Act (NHPA)

Mitigation & Cumulative Impacts under the Rule



- Adopted NEPA definitions

- Sequential approach to mitigation

- Avoid
- Minimize
- Rectify
- Reduce or eliminate over time
- Compensate - **is last!**



- Cumulative impacts - incremental environmental impact of action, together with impacts of past, present, and reasonably foreseeable future actions.

- May be individually minor, but collectively significant over time.

Mitigation Standards in Permits



- All permittees are required to avoid and minimize the potential take to the degree practicable
 - Must provide evidence in application
- Programmatic permits standard is *maximum degree technically achievable* - any take that occurs is unavoidable
- Should be related to the impacts of the take, and be demonstrably effective



NEPA on New Permits

The Service must consider cumulative impacts, and address them in our NEPA*, before issuing a permit

- Most standard permits should qualify to be categorically excluded
- Larger-scale standard permits and small-scale programmatic permits will require Environmental Assessments (EA)
- Most large-scale programmatic take permits will require Environmental Impact Statements (EIS)
- **Opportunity to comment on EAs and EISs! (We are all stakeholders.)**

*Important for projects that have not yet had a federal 'nexus' triggering NEPA.



NEPA on All Permits Must Also Address Other Migratory Birds

- Migratory Bird Treaty Act of 1918
 - Provides prohibitions regarding the “take” of migratory birds
 - Has **no** provision for “incidental take”
- Executive Order 13186
 - Directs executive departments and agencies to take actions to further implement the MBTA
 - Provides conservation strategies for NEPA
 - USFWS NEPA on permits must be consistent with E.O.
 - Takes an ecosystem approach –
 - i.e., **habitat, landscape, Migratory Bird ‘resource’**



E.O. 13186 Conservation Strategies to Address in NEPA

- Avoid or minimize adverse impacts on migratory bird **resources** when conducting agency actions
- Restore and enhance the habitat of migratory birds
- Design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes



Programmatic Permits



- Both Eagle Act regulations (22.26, 22.27) include provisions for programmatic take
- Programmatic take - take that is recurring and not in a specific, identifiable timeframe and/or location
- **Performance-based** — they must be earned



Programmatic Permit Measures



- Authorizations will be based on implementation of “advanced conservation practices”
- “Advanced Conservation Practices” (ACPs) are **scientifically supportable** measures approved by the Service and
- Representing the **best available techniques** to reduce eagle take to a level where remaining take is **unavoidable**

The Programmatic Approach



Incorporates broader conservation principles than standard permit

- Best way to address the potential for **cumulative impacts** from activities over large spatial/temporal scales
- Encourages multi-party, **landscape-scale strategies** to get to no-net-loss of the breeding population
 - Can be tied to a geographic area eagle conservation plan
- Compensatory mitigation is to provide long-term protection from take and long-term conservation of breeding pairs

Site-Specific Analyses for Programmatic Permits



- Essential for eagle conservation, effective mitigation measures, and for NEPA analyses
- Should include at least the following
 - Nest inventory & territory delineation (esp. GOEA)
 - Available occupancy & productivity data
 - Migration corridors
 - Winter use
 - Line-of-site evaluation
 - Eagle use patterns
 - (breeding and non-breeding)
 - Known foraging areas
 - Potential mitigation



Summary



The “new” permits program provides:

- Conservation-based approach to permits for eagles
- Opportunities for raptor biologists to comment
- Landscape approach to minimize cumulative impacts
- Opportunities to acquire more information on eagles



Questions?

Please contact:

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