



Animal Welfare Institute

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Public Comments Processing
FWS-R9-MB-2011-0094
Division of Policy and Directives Management
U.S Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

Re: Proposed Rule on Eagle Permits; Revisions to Regulations Governing Take Necessary To Protect Interests in Particular Localities (Docket No. FWS-R9-MB-2011-0094)

To Whom It May Concern:

On behalf of the Animal Welfare Institute (AWI), please accept the following comments on the U.S. Fish and Wildlife Service (FWS)'s proposal to revise the regulations for programmatic permits governing non-purposeful take of golden eagles and bald eagles under the Bald and Golden Eagle Protection Act ("BGEPA"). AWI opposes the 30-year eagle take permit because 1) AWI supports FWS' 2009 statement indicating that short-term—not long-term permits—are appropriate in order to provide for the opportunity to regularly review the ongoing impacts of such facilities on the environment, including protected species; and 2) there is a lack of scientific justification for issuing 30-year permits.

As noted by various conservation organizations and as documented in the scientific literature, the ecological footprint of commercial wind energy facilities are typically extensive.¹ It is critical that these facilities be sited and operated in a manner that avoids negative ecological impacts to the greatest extent practical, and fully minimizes and offsets any remaining unavoidable impacts on species and habitats (in particular, those of conservation concern, including bald and golden eagles). Specifically, it is imperative that the relevant permit duration be limited to provide the opportunity for regular review of the ongoing impacts of such facilities on the environment, including protected species, and to facilitate permit restructuring if necessary to mitigate, reduce, or eliminate documented impacts. The benefit of reducing carbon emissions and fossil fuel dependence should not undermine the burden wildlife can be subject to as a consequence of these technological advancements.

¹ See Nature Conservancy comments on Eagle Permits; Revisions to Regulations Governing Take Necessary to Protect Interests in Particular Localities; Federal Register 77(72):22278-22280, April 13, 2012. Animal Welfare Institute. September 22, 2014.

I. The Need for Five-Year Permits

In 2009, FWS acknowledged that a permit longer than 5-years would be contrary to the conservation and protection of bald and golden eagles.² Specifically, in 2009, the FWS stated that:

“...the rule limits permit tenure to five years or less because factors may change over a longer period of time such that a take authorized much earlier would later be incompatible with the preservation of the bald or golden eagle. **Accordingly, [FWS] believe[s] that five years is a long enough period within which a project proponent can identify when the proposed activity will result in take.**” (74 Fed. Reg. at 46,856).

The 2009 rule required that eagle take permits be compatible with the preservation of eagles, yet the proposed rule reflected the opposite of FWS’ own findings. The science behind that reasoning has not changed and, in fact, FWS has failed to put forth a rational explanation to account for this change. Merely claiming that an “internal review” process will be sufficient to address any threats to the conservation of eagle species—as the FWS has proposed—entirely undermines the value of a transparent process allowing the public to participate in and contribute to such analyses.

In addition, it is also deeply troubling that the internal review process will not be subject to public review. This makes it a poor replacement for the five-year permit renewals that would provide opportunity for public input consistent with the requirements of the National Environmental Policy Act (NEPA).

II. There is No Legal or Scientific Justification to Issue 30-Year Permits

FWS has proposed to substantially extend the duration of permits to allow eagle take prior to implementing any measures proven to reduce eagle deaths at wind farms. Yet, according to the FWS’ own 2013 guidance for the eagle take permit rule, “there are currently no available scientifically supportable measures that will reduce eagle disturbance and blade-strike mortality at wind projects.”³ Moreover, models that have been used in the past to predict potential eagle deaths at wind farms are still only theoretical and unproven. They have previously predicted little risk to eagles without a proper basis for their conclusion. For example, the Pine Tree wind project in California was once thought to pose very little risk to eagles, but now has a higher eagles-killed-per-turbine rate than the notorious eagle-killing wind turbines in Altamont Pass.⁴ Furthermore, FWS has directly and clearly articulated that there is still a lack of information on the impact of wind energy facilities on eagles:

“We have relatively little information on the impacts of wind energy on eagles. . . . In addition to ensuring that the effects of the permitted activities are compatible with the

² 74 Fed. Reg. at 46,856.

³ *Id.*

⁴ See Sahagun, Louis, U.S. probes golden eagles' deaths at DWP wind farm. (February 16, 2012) Los Angeles Times, available at <http://articles.latimes.com/2012/feb/16/local/la-me-eagles-20120216>.

preservation of eagles, monitoring data will be critical for assessing the impacts of the proposed facilities, small or large, in the future.”⁵ [Emphasis added]

Ignoring this critical information will only thwart future conservation initiatives.

Based on what little information is available, there is no rationale for extending the permit period by 25 years. In this case the FWS has rescinded and reinstated 30-year permits due to political pressure, not because of the “best science available,” as alleged in its May 4th press release. The extension is incompatible with the basic knowledge we do have about eagles and what is needed for their conservation. For example, the proposed rule change makes it clear that the agency’s concerns are based on the length of planned projects instead of the lifespan of individual birds and breeding pairs. Bald eagles have an average lifespan of 20 years;⁶ while golden eagles may live for 30 years (*these numbers could be much lower in populations living near wind farms).⁷ This makes it likely that the proposed evaluations of a project’s expected impacts on a population every 30 years will fail to protect eagle populations from a range of deleterious threats.”

In addition, the Bald and Golden Eagle Protection Act has a broader definition of “take,” than the MBTA, which the FWS acknowledges in their Land-Based Wind Energy Guidelines:

“Under authority of the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668–668d, bald eagles and golden eagles are afforded additional legal protection. The Service further defined the term “disturb” as agitating or bothering an eagle to a degree that causes, or is likely to cause, injury, or either a decrease in productivity or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.” (50 CFR 22.3.)

This additional protection underscores the need for 5-year permits that will allow for comprehensive reviews that fully consider these multi-faceted harms. Factors that affect eagles and eagle populations will also vary significantly over a 30-year period, and FWS’ ability to predict and plan for those changes is extremely limited.⁸ These changes include the loss of habitat due to development, increasing frequency and intensity of wildfires, variability in prey abundance, climate change, and cumulative impacts of wind energy and other development in eagle occupied areas.⁹

⁵ See 77 Fed. Reg. 22268.

⁶ Norfolk Virginian-Pilot (Associated Press). Retrieved 2015-06-15.

⁷ Golden eagles between one and three years old living near a west-central California wind turbine facility had an estimated 21% yearly fatality rate. McIntyre, C.L.; Collopy, M.W.; Lindberg, M.S. (2006). "Survival probability and mortality of migratory juvenile Golden Eagles from Interior Alaska". *Journal of Wildlife Management* **70** (3): 717–722. doi: [10.2193/0022-541x\(2006\)70\[717:spamom\]2.0.co;2](https://doi.org/10.2193/0022-541x(2006)70[717:spamom]2.0.co;2). JSTOR [3803426](https://www.jstor.org/stable/3803426).

⁸ These factors are discussed in the Final Environmental Assessment for the 2009 eagle take permit rules. See FWS, Final Environmental Assessment for Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act (2009), available at http://www.fws.gov/migratorybirds/CurrentBirdIssues/BaldEagle/FEA_EagleTakePermit_Final.pdf, and generally see page 10, FWS, Eagle Conservation Plan Guidance, Module 1 – Land Based Wind Energy, Version 2. April 2013.

⁹ *Id.*

Conclusion

AWI strongly urges the FWS to return to the 2009 rule, limiting take to five-year permits. The lack of research available on the deaths of the bald and golden eagle at these facilities—coupled with the agency’s lax regulations on the wind industry—are dangerous to the future of these iconic birds. Instead of acting to protect the species, the proposed rule suggests that the FWS has prioritized the interests of the energy industry at the expense of eagles.

The five-year permit also allowed for public participation in the decision-making process and the opportunity to deny permit renewal for facilities that were not in compliance with relevant federal laws. Conversely, the proposed “internal review” process eliminates any public role in the decision-making process and appears to be an effort to streamline the process for the industry.

Finally, although much needed information remains unavailable—particularly the number of birds killed at these facilities—the 2009 rule provided much stronger oversight and potential relief to damaged eagle populations around these wind energy facilities and turbines. In contrast, the revised rule would allow FWS to issue permits for as long as 30-years without any serious supervision.

Thank you in advance for providing this opportunity to comment on this proposed rule and for considering these comments. Please send any future correspondence or information about this proposed rule to Tara Zuardo, Wildlife Attorney at tara@awionline.org or, by mail, to 900 Pennsylvania Ave SE, Washington, DC 20003. She can also be reached by telephone at (202) 446-2148.

Sincerely,

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