



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

29 December 2022

Public Comments Processing
Attn: FWS-HQ-MB-2020-0023
U.S. Fish and Wildlife Service, MS: PRB/3W
5275 Leesburg Pike, Falls Church, VA 22041-3803

The Wildlife Society
425 Barlow Place, Suite 200
Bethesda, MD 20008

Re: Permits for Incidental Take of Eagles and Eagle Nests [FWS-HQ-MB-2020-0023]

Thank you for the opportunity to submit comments in response to the U.S. Fish and Wildlife Service's (hereinafter "Service") efforts to advance implementation of the Bald and Golden Eagle Protection Act.

Founded in 1937, The Wildlife Society (TWS; wildlife.org) and our network of affiliated chapters and sections represent over 15,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitat through science-based management and conservation.

The Wildlife Society's Renewable Energy Working Group (REWG) focuses on wildlife and ecological issues associated with the siting, construction, and operation of renewable energy generating facilities. Our membership includes industry professionals, academics, and federal and state employees.

The Wildlife Society in partnership with TWS' REWG appreciate the Service's recognition of the need to increase compliance in the incidental take permitting program for bald and golden eagles. We believe the framework for undertaking a general permitting program for four permit types (wind energy activities, solar energy activities, eagle nest take, and depredation) will allow for additional compliance and promote the conservation of these two species.

While we are supportive of this framework, we believe dissemination and solicitation of stakeholder input on the several implementation guidance documents the Service has yet to complete will be vital to ensuring industry buy-in.

This is notably the case for allowable compensatory mitigation activities that are proposed to be required under general permitting for golden eagle take. The Wildlife Society supports the requirement that all activities resulting in take of golden eagles be offset with compensatory mitigation activities. However, we urge the Service to **draft guidance that considers a broader swath of mitigation activities** and best management practices for

regulated entities to deploy to mitigate for take, particularly for at-risk golden eagle populations. Such an examination will be timely as the Service undertakes a review of its agency-wide mitigation policy.

Please find below additional points of discussion based on questions provided in the proposed rulemaking:

Are the anticipated number of annual permits to be issued for each permit type a reasonable estimate?

Based on the information provided in the supplemental environmental assessment [FWS-HQ-MB-2020-0023-1908], The Wildlife Society has no reason to believe the anticipated number of annual permits for each proposed general permit type is inappropriate. However, specific permitting conducted since 2016 provides little indication of how regulated entities will interact with a streamlined general permitting approach. For example, since 2016, specific permit requests for wind energy projects have not exceeded 100 applications. The proposed rule sets permit fees based on an anticipated 74 wind project permit applications annually. **TWS recommends an annual review of the number of permits provided**, to ensure the needed funds to maintain permit program operations are being collected based on the number of assumed general permit applications.

We propose the use of abundance criteria as a threshold qualification for a wind energy general permit. Are there other eligibility criteria for wind-energy general permits, either based solely on population abundance or beyond population abundance, we should consider adopting that would provide certainty and simplicity in the permit process for eligible projects while still meeting the Eagle Protection Act's preservation standard, including the criteria analyzed in Alternative 2 of the DEA?

As noted by the Service in the draft environmental assessment, the eBird relative abundance datasets provide a reasonable metric for crafting an initial threshold framework (U.S. Fish and Wildlife Service 2018, RuizGutierrez et al. 2021).

In future review and analysis, the Service will be presented with a prime opportunity to work with state, tribal, and local stakeholders on additional datasets to be considered when evaluating threshold criteria. Multi-stakeholder coordination on relative abundance data will also allow the Service to address some of the shortcomings in eBird data. While TWS does not take issue with the eBird data processing conducted by the Service, inclusion of additional datasets will allow data biases, such as abundance data that is skewed toward areas of frequent human travel, to be better understood.

The Wildlife Society recommends the **creation of a standard operating procedure outlining hierarchical preference for data set utilization**, identifying state, tribal, and local datasets as the first preference and eBird relative abundance datasets as a secondary option if no appropriate datasets are available. Such a procedure would appropriately be considered by undertaking the creation of a stakeholder advisory committee to assist in a framework for review.

Further review of datasets underpinning rulemaking should not however be limited to wind energy permit types. Data underpinning stipulations for other proposed general permit types, notably nest eagle take permits, would benefit from the inclusion of additional datasets. The Service should routinely review the best available data to determine if the requirement that projects be sited greater than 660 feet from bald eagle nests, and greater than 2 miles from golden eagle nests, is appropriately meeting the Service's eagle preservation standard.

Should the relative abundance thresholds for wind energy general permits (listed in [table 1](#)) be updated automatically based on new data, and if so, how often?"

The Wildlife Society wants to reiterate that state, tribal, and local datasets should be the preferred documentation to be used for evaluation of eagle activity. If the Service decides to rely on eBird datasets, then threshold criteria should be updated at least annually. **This process would also benefit from the solicitation of state and tribal input, which could be facilitated by undertaking the creation of the stakeholder advisory committee mentioned above.**

How should the Service implement the proposed audit program? Are there costs we should consider that ensure accuracy of the results while reducing the burden to the public?

Ideally, the Service would employ a stratified audit process that allows projects under general permit that present a higher risk based on historic take metrics to have more projects entered into an audit pool. Unfortunately, such a process would be complicated by the lack of historic engagement in specific permitting under the Act and the data deficiencies on take that have resulted. The proposed exclusion of third party reviews every five years for general permitting compliance further complicates the ability for the Service to audit projects based on risk going forward, and may result in a compounding of data deficiencies.

The Wildlife Society understands that cost and a lack of industry buy-in were major considerations in not including the five year review requirement for general permits. Based on this, it is logical for the Service to pass the cost of monitoring to the regulated entity via permitting fees to allow the Service to undertake a federal monitoring program. However, **the rulemaking does not provide clarity on next steps for the Service in undertaking monitoring efforts and its associated goals.** Similar to the statements on data review mentioned above, such a review would benefit from the creation of a stakeholder advisory committee.

Thank you for taking the time to review input provided by members of the wildlife profession. The Wildlife Society thanks the Service for grappling with an important and timely rewrite of Bald and Golden Eagle Protection Act permitting. We look forward to finalization of this rulemaking, and additional efforts to work with industry partners on the take of federally protected species, such as the pending proposal to authorize take of species listed under the Migratory Bird Treaty Act.

Please contact Caroline Murphy, AWB®, government relations manager at The Wildlife Society (cmurphy@wildlife.org), with any questions regarding the comments outlined above.

Sincerely,

A handwritten signature in cursive script that reads "Donald Yasuda".

Don Yasuda
Certified Wildlife Biologist®
President | The Wildlife Society