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29 December 2022

The Honorable Shannon Estenoz  
Assistant Secretary for Fish, Wildlife, and Parks  
1849 C Street NW  
Washington D.C. 20240

Re: Docket No. FWS-HQ-MB-2020-0023, Permits for the Incidental Take of Eagles and Eagle Nests  
Submitted via <http://www.regulations.gov>

Dear Assistant Secretary Estenoz,

On behalf of our members, we thank you for this opportunity to provide input upon the proposed Permits for Incidental Take of Eagles and Eagle Nests rule. American Bird Conservancy is a 501(c)(3), non-profit membership organization whose mission is to conserve native birds and their habitats. We work throughout the Americas to safeguard the rarest bird species, restore habitats, and reduce threats. As part of our threat abatement program, we have been working with stakeholders to promote bird-smart wind-energy development practices for over 10 years. While we support the framework of a general permit system for incidental take of eagles from wind energy development and powerlines, we have concerns about mapping, monitoring, and administration of the rule. In addition, we have several concerns specific to the eastern population of the Golden Eagle.

### **Broad Concerns**

- The proposed rule fails to properly apply the mitigation hierarchy, placing too much emphasis and reliance upon compensation. The Service needs to add measures to first avoid and minimize impacts and then to compensate for them. To a large degree, many of the following comments are geared toward this over-arching goal.
- The lack of an overarching federal mitigation policy raises concern that ongoing development impacts affecting eagles will not be balanced out with commensurate conservation policies or habitat protection.
- General permits should include some level of agency review or be issued directly by the agency. Without agency review, the public lacks assurance that eligibility criteria are actually met. Likewise, self-certification may remove the only mechanism for judicial review and further limit vital public participation in the permit process.



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### **Unaddressed Concerns Regarding Toxins and Eagles**

- The impact of lead on eagle populations is severe and is not currently being addressed. New data were published this year which demonstrate a population-level effect on Bald and Golden Eagles from lead ammunition. This does not factor in the sublethal effects experienced by Eagles, which makes them more susceptible to disease, poisoning, and injury. Additionally, sublethal lead effects from ammunition and tackle affect cognitive abilities including navigation, flight, spatial awareness, and sight, all of which increase likelihood of interactions with powerlines, turbines, and other anthropogenic structures. A national policy is urgently needed to protect eagles and important wildlife habitats from needless contamination from lead ammunition used for hunting and fishing tackle.
- Similarly, neonicotinoid pesticides pose a major threat to birds and aquatic wildlife, yet these harmful chemicals continue to be used on National Wildlife Refuges and other important habitats frequently used by eagles.
- Eagles are at risk from rodenticide and cyanide poisoning through secondary ingestion of the chemicals via scavenging. Many rodents, coyotes, and other vermin which are killed or incapacitated by rodenticides and cyanide (via M44s) are ingested by Eagles, subsequently poisoning the birds and causing illness, neurological damage, or death.

### **Powerline Rule Feedback and Concerns**

- We applaud the Service for the structure of this rule. While some of our concerns around general permits and monitoring do apply to powerlines as well, the proposed system seems poised to generally improve outcomes for eagles. We agree that the proposed combination of requiring new power lines to be electrocution-safe, reconstruction of old power lines to make poles electrocution-safe, the creation and implementation of a reactive retrofit strategy, and the creation and implementation of a proactive retrofit strategy will be an effective approach to reducing the take of eagles on power-line infrastructure across the landscape over time.

### **Mapping Concerns**

- The heavy reliance upon eBird data to delineate permitting zones fails to properly utilize other sources of eagle range data. For instance, the large body of transmitter studies on eastern Golden Eagles should be included and would provide greater precision, particularly during migration.
- eBird data lacks the precision to adequately support a permitting system, given the discrepancies in data quality across the country. Data quality for eagle relative abundance is affected by differences in user effort and experience as well as by differences in detectability of eagles across their range, times of year, and in different habitats.

- The map seems too simplistic. It would benefit from additional tiers and could do so without requiring substantially more administrative burden. We feel there are zones which contain such high relative abundances of eagles that incidental take would be difficult to overcome and result in population-level effects. This has been documented occurring at some turbines in Altamont Pass, for instance. Adding an additional exclusion tier would be ideal. Short of that, even a higher-risk zone still administered under the specific permit but which provides a clear signal to developers that the area might require higher-than-usual compensatory mitigation might serve to steer projects away from the worst areas. Additionally, a tier designated as data deficient could provide value. As noted, the effort of eBird users differs dramatically across the country; areas with very few complete checklists simply may lack adequate data for informed permitting decisions. Including this tier would serve as a signal to developers to conduct more pre-assessment monitoring to avoid greater-than-anticipated incidental take of eagles.
- A process for map revision should be explicitly described. This process ideally would occur on a more-regular basis (leveraging the convenience of eBird) and with the involvement of nongovernmental experts on up-to-date eagle abundance data.

### **Monitoring Concerns**

- Monitoring requirements for eagle carcasses under the general permit are too light. Requiring monitoring only for one hour every three months by non-expert staff is inadequate. For migratory populations of eagles in particular, presence and absence can be highly variable based upon time of year and weather conditions. Even non-migratory eagles are at such naturally low densities that more consistent surveying methods are needed to accurately detect their presence. Carcass monitoring intervals should be determined by carcass persistence trials. Given the seasonal and geographic variability of carcass detection, a one-size-fits-all approach is unlikely to provide accurate rates of mortality. At the very least, monitoring should be done monthly. At the Manzanita facility in California, where the concern is for California Condors, monthly monitoring is required. Given that many of those birds are actually tagged and that mortality events are far more likely to be detected outside monitoring efforts, eagle carcass monitoring of untagged birds would ideally be even more frequent.
- Alternately, monitoring frequency could be tied to seasonal relative abundance of eagles at the site, based upon maps provided by FWS.
- Facility monitoring should ideally be undertaken by a third-party, instead of facility staff. At the very least, FWS should provide training materials and protocols to ensure uniformity by facility staff.
- Monitoring of specific permit sites should be required at a higher frequency than that for general permit sites and should be conducted by agency staff or a third-party.

### **Data and Operational Concerns**

- Eagle thresholds should apply to the combined take of both species. Instead of requiring heightened measures and a specific permit upon detecting four eagles of any one species, it should include both species. Given the low and variable detection probability of eagle carcasses generally, the rate of kills by turbines overall is a more accurate measure of the risk those particular turbines might pose. By conflating the two species, actual mortality at some sites could be up to twice as high as others (where only one species exists, for instance) before triggering the same permit condition.
- Eagle take data should be required to be made public under both the general and specific permit. Lack of access to proprietary mortality data is a major barrier to responsive public oversight of incidental take by wind turbines. A requirement for developers to submit observations to a centralized open-access database could dramatically improve the public's confidence in otherwise-opaque processes.
- The threshold of four eagle deaths to trigger a heightened permit requirement seems precariously high. Given the low and variable detection probability of carcasses, such a threshold could be evidence of dozens of eagle deaths before more-careful measures are put in place.
- In the case that eagle take is high enough to trigger the need for an Adaptive Management Plan, that plan should be approved by FWS.
- FWS auditing of sites should be more robust, to encourage good faith compliance by developers.
- Permit mitigation requirements should be more robust. Curtailment works well for eagles and so should be required. Seasonal curtailment at high-risk sites would be ideal. Responsive curtailment upon eagle detection has proven effective as well. At the very least, FWS should issue guidance and recommendations for appropriate application of curtailment, given its substantial potential to reduce eagle mortality.

### **Specific Eastern Golden Eagle Concerns**

- Compensatory mitigation measures for Golden Eagles should be population-specific. Given the small size and relatively restricted range of the eastern Golden Eagle population, compensatory mitigation should be tailored to ensure that this population does not unduly decline from wind development.
- Fatality monitoring protocols should be adapted to account for this population's unique habitat use patterns.
- We have concerns about the accuracy of the map for eastern Golden Eagles. Transmitter data for this population indicates high usage of areas which fall under the general permit on the map. Additionally, in our conversations with eastern Golden Eagle biologists, hawkwatchers, and local birding experts throughout the east, it is clear that



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the map fails to include areas where eagle relative abundance during migration is known to be high.

### **Miscellaneous Concerns**

- General permits should be not be grandfathered-in, should FWS determine that take is too high. Upon FWS' determination that eagle take under the general permit program exceeds that which is compatible with preservation of Bald and Golden Eagles, FWS will suspend the program. As permits may be valid for up to five years, significant eagle take may still continue under general permits long after they are suspended.
- The rule should be specified as to apply for new facilities and upon repowering at existing facilities.
- The proposed framework leaves pre-construction eagle surveys more important than ever. Adherence to FWS survey guidelines prior to construction should be a condition to participate in the permitting process. Given the inherent uncertainties and data deficiencies of the chosen approach, strengthening this condition would provide important balance to site selection.
- Administrative check-ins should be reinstated as part of the permitting process. By relegating permit amendments to ad hoc determination by the permittee or FWS, the process loses mandatory periodic checkpoints which encourage compliance.

Thank you for your consideration of these recommendations, and we welcome further discussion.

Sincerely,

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