

Eagle Rule, DPEIS and Population Study FAQ

Q. What do eagle incidental take permits cover?

A. Eagle incidental take permits authorize incidental take (disturbance, injury or death) of eagles that results from a broad spectrum of public and private activities, such as utility infrastructure development and maintenance, energy development, road construction, operation of airports, commercial or residential construction, resource recovery, recreational activity development, etc. The vast majority of these permits authorize eagle disturbance rather than lethal take.

Q. Why does the Service issue permits that allow for eagles to be killed?

A. The Fish and Wildlife Service is committed to the conservation of eagles throughout the United States. Certain otherwise lawful activities may result in the unintentional (also called non-purposeful or incidental) deaths of eagles. Although unintended, those eagle deaths constitute a violation of the Bald and Golden Eagle Protection Act (also known as the Eagle Act). The take permitting system provides an effective means for the Service to work proactively with public and private entities to reduce the number of eagle deaths and gain critical data to track mortality rates and causes that help inform its regulations. In return for working with the Service to reduce eagle deaths, the permittee is provided a guarantee that they will not be prosecuted up to a specific number of eagle deaths.

Q. How is authorizing the killing of eagles consistent with preservation of their populations?

A. Animal populations are able to compensate to a certain degree for human-caused mortality through increased production of young and decreased mortality from other causes. How much additional mortality the population can withstand and how it compensates for that mortality are species specific. The Service has studied bald and golden eagles in depth to understand their population attributes and sources of mortality. This information enables us to determine the number of eagle take permits we can issue while ensuring the population remains stable. The permits themselves act as an important feedback mechanism by providing additional information on eagle mortality to Service scientists that help inform future permitting decisions.

Q. What if the permitted amount of eagle take is exceeded?

A. Each permittee works with the Service to implement avoidance and minimization mechanisms to reduce the chance of harm to eagles. The Service is conservative in its permitting, meaning that in all likelihood, the minimization and avoidance measures the permittee has implemented will result in far fewer eagle deaths than the permit allows. In the case of golden eagles, under the approach the Service is proposing, applicants will be expected to fund conservation measures designed to protect more than one eagle for every eagle expected to be taken. However, should take of eagles exceed the expected rate, the permittee has the opportunity to work with the Service to implement additional measures to reduce eagle mortality before the take permit limit is exceeded. If the permittee fails to do so and permitted take is exceeded, the entity would be in violation of the Eagle Act. Any additional take over the allowed level would be considered unlawful and liable for prosecution.

Q. How does the proposed rule modify the Eagle Act "preservation standard"?

A. The Eagle Act requires that permitted take of eagles be compatible with the preservation of bald and golden eagles. We refer to this clause as the Eagle Act preservation standard and it underpins the Service's management objectives for eagles. The existing regulations define this standard as "consistent with the goal of maintaining stable or increasing breeding populations." We are proposing to keep this definition while adding the clause "and the persistence of local populations, throughout the geographic

range of both species.” Including this clause in our national standard more clearly defines conservation and mitigation efforts at the local scale, and responds to state, tribal and other stakeholder input into our eagle conservation programs.

Q. Why is the Service proposing to increase the maximum length of take permits from five to 30 years?

A. The current five-year maximum duration for programmatic permits appears to be a primary factor in discouraging many project proponents from seeking eagle take permits. Many activities that incidentally take eagles due to ongoing operations have lifetimes that far exceed five years. We need to issue permits that align better – both in duration and the scale of conservation measures – with the longer term duration of industrial activities, such as electricity distribution and energy production. Extending the maximum permit duration is consistent with other federal permitting for development and infrastructure projects. Bringing more projects into compliance with the Eagle Act would result in implementation of additional eagle conservation measures.

Thirty years is a maximum permit length, not the automatic permit length. Permits of shorter duration may be granted where appropriate. Thirty-year permits require the permittee to consult with the Service every five years to ensure expected take levels are not being exceeded. Additional requirements may be placed on the permittee at those five-year reviews, and if the permittee is found not to be complying with avoidance, mitigation or compensation requirements, the permit can be revoked.

Q. What national take limits are being placed on eagles under the current proposal?

A. Bald eagle populations are increasing, with the population throughout the United States now estimated to be approximately 143,000 individuals. The population outside the Southwest is predicted to continue to increase, potentially until populations reach equilibrium at about 228,000. Based on those assessments, bald eagle take allowances would increase from the current limits to 4,200 annually without requiring additional compensatory mitigation.

We estimated the total population size for the golden eagle throughout the United States to be 39,000 in 2009 and 40,000 in 2014. However, although the golden eagle population trend estimate appears stable, population models similar to those used for the bald eagle suggest the population in the western United States might be starting to decline. Human-impacts account for the majority of golden eagle mortality. Based on this information, the golden eagle take allowance would continue to be zero unless compensatory mitigation is provided. The proposal calls for golden eagle take to be compensated at a ratio exceeding 1:1, meaning there would be a net gain for golden eagle conservation as a result of each permitted golden eagle take.

Q. What form can compensatory mitigation for eagle mortality take?

A. The proposed rule emphasizes use of broader mitigation options, including third-party mitigation funds. The types of accepted offsetting mitigation measures (e.g., power pole retrofits) would be expanded by allowing measures with more uncertainty and risk with regard to their effectiveness (e.g., lead abatement) to be used. However, if such techniques are employed, they would need to be applied at a greater ratio and with credible monitoring due to the uncertainty.

Q. What are Eagle Management Units (EMUs) and how is the Service proposing to restructure them?

A. EMUs are a functional way for the Service to track eagle populations and trends, and effectively manage the population to ensure the species survival at an ecologically meaningful scale. Currently the Service uses its regional administrative structure as the basis for bald eagle EMUs and Bird Conservation Regions for golden eagle EMUs. The proposal changes this to base EMUs on eagle flyways with some

modifications. For bald eagles, EMUs would constitute the Atlantic, Mississippi, Central and Pacific flyways, with the Pacific Flyway divided into three smaller EMUs based on latitude. Golden eagles would have three EMUs: Pacific, Central, and combined Mississippi/Atlantic flyways.

Q. Will there still be two types of take permits, one for one-time take and one for recurring take?

A. The proposed rule removes the distinction between “standard” (one-time take) and “programmatic” (recurring take) in favor of a single eagle take permit system. This simplifies the process and creates a standardized set of requirements, terminology, fees, and application processes. The term “nonpurposeful take” would be eliminated in favor of “incidental take.”

Q. What is the proposed standard for demonstration by a project that they have avoided eagle mortality?

A. All projects must demonstrate that they avoid and minimize take “to the maximum degree practicable.” This eliminates the confusing distinction between “unavoidable” (that has applied to programmatic permits) and “cannot practicably be avoided,” and eliminates reference to Advanced Conservation Practices.

Q. Will eagle mortality data submitted by permittees be made publically available?

A. Yes. This requirement is already in place.

Q. How will existing eagle take permits be affected by the changes?

A. Existing permits will be unchanged by any changes to the eagle management rules. When permittees apply for a new or renewed permit, they would be subject to the new regulations.

Q. What fees is the Service proposing for take permits?

A. To recoup the cost of processing longer-term permits, which are generally complex due to the need to develop robust adaptive management measures, we propose to assess a \$36,000 permit application processing fee for eagle incidental take permits of five years duration or longer. This is the same cost as the current permit processing fee for five-year programmatic permit applications. We propose to assess a \$15,000 administration fee every five years for long-term permits. This fee would cover the cost to the Service of conducting the five-year evaluation and developing any appropriate modifications to the permit.

A commercial applicant for an incidental take permit of less than five years’ duration would pay a \$2,500 permit application processing fee (an increase from the current fee of \$1,000 for programmatic permits and \$500 for standard permits). The higher fee better reflects the costs of processing those permits. The fee for permit amendments would increase from \$150 to \$500.

The incidental take permit application processing fee for homeowners would remain \$500 and the amendment fee for those permits would also remain unchanged at \$150.

The proposed higher fees for commercial entities would recover a larger portion of the actual cost to the Service, including technical assistance provided to the potential applicant by the Service prior to receiving the actual permit application package. Commercial entities have the opportunity to recoup the costs of doing business by passing those costs on to their customers. For homeowner permits, the fees would remain the same, even though federal agencies are directed to recoup the full costs of processing permits. The reality is that many of the homeowners who justifiably need eagle permits would not be

able to pay the actual full cost to the Service of providing technical assistance to the homeowner and processing their permit applications.

Q. Why did the Service prepare a Programmatic Environmental Impact Statement (PEIS) along with the proposed regulations?

A. The National Environmental Policy Act (NEPA), requires federal agencies to consider the effects of their proposed actions on the human environment to ensure that decisions are based on an understanding of environmental and human consequences. In some cases, an environmental assessment (EA) or an environmental impact statement (EIS) is required. A programmatic environmental document (PEIS) is prepared when an agency is proposing to carry out a broad action, program, or policy. Programmatic analysis can save resources by providing NEPA coverage for an entire program, allowing subsequent NEPA analyses to be more narrowly focused on specific activities at specific locations.

In addition to the cost to project developers, NEPA requirements for permitting individual projects have been responsible for a significant portion of the Service's time and effort in processing permit applications. This draft PEIS (DPEIS) programmatically analyzes eagle take within certain levels and the effects of complying with compensatory mitigation requirements to allow the Service to tier from the DPEIS when conducting project-level NEPA analyses.

Q. What alternatives are analyzed in the DPEIS?

A. The DPEIS analyzes the effects of management at different geographic scales; sustainable take levels for bald and golden eagles—including the effects of permitting up to those levels; and the proposed rule revisions. Adoption of the four administrative flyways currently used to manage other migratory birds as eagle management units (EMUs) is analyzed as an alternative to the current EMUs. The PEIS also evaluates two contrasting levels of risk in EIS alternatives: a relatively liberal take rate with a 50:50 chance of allowing for more take than is compatible with maintaining stable populations, and a conservative take rate: with only 20:80 chance of such an outcome.

Q. How does the public provide input on the DPEIS?

A. The draft PEIS is available on the Service's website at: <http://www.fws.gov/birds/management/managed-species/eagle-management.php> and also at: www.regulations.gov at Docket No. FWS-R9-MB-2011-0094.

Q. What is the purpose of the report entitled *“Bald and Golden Eagles: Status, trends, and estimation of sustainable take rates in the United States?”*

A. This report summarizes and analyzes available data on the demography and population status of bald and golden eagles. The Service, U.S. Geological Survey colleagues, and many state, private, and university eagle scientists have worked collaboratively since 2009 to greatly improve our understanding of eagle biology. The status report pulls all of this information together to generate estimates of population size and to evaluate the resiliency of populations of both species to added mortality. Collectively, these analyses allow the Service to set take limits for each bald and golden eagle EMU that are consistent with the management objective of maintaining stable populations, taking into account the environmental and measurement uncertainty in the underlying data.

Q. How many golden eagles are killed by colliding with wind turbine blades each year?

A. We do not have an estimate of the number of eagles killed at wind facilities because few facilities systematically monitor and report eagle fatalities to the Service. Wind projects under permits or settlement agreements monitor for and report fatalities, but this represents a small proportion wind projects at this time. In 2013, Service biologists reviewed public records about deaths of eagles at wind facilities. These records indicated that more than 85 eagle deaths at 35 wind facilities in 13 states occurred between 2009 and 2013. This suggests incidental death of eagles at wind facilities has occurred over a wide range of projects. However, these data do not give us information on how many eagles are killed annually. In our analyses for this PEIS, we estimated about 545 golden eagles die from collisions each year, but this number combines deaths from turbines, utility wire strikes, and vehicle collisions. Bringing operating wind facilities under eagle take permits will help us learn more about the extent of this issue, encourage development of credible avoidance and minimization measures to reduce the threat, and provide for compensatory mitigation for losses that cannot be avoided.