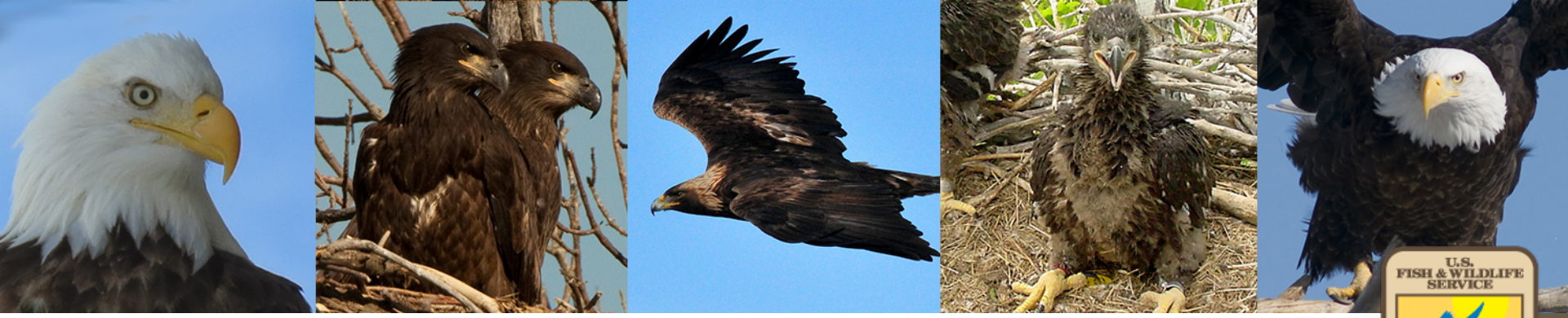


EAGLE SUMMIT III

March 20, 2014 - Denver, Colorado

U.S. Fish and Wildlife Service – Mountain Prairie Region
Native American Fish and Wildlife Society

Eagle Summit III

Facilitator: Yolynda Begay

Goal: Eagle Summit III is designed to improve communication and build knowledge around eagles between Native Americans and the Mountain-Prairie Region of the U.S. Fish and Wildlife Service. Discussions will center on topics of mutual interest and identify outstanding issues that need resolution.

Eagle Summit III: Morning Panelists

- **Alvin Windy Boy Sr.**
  Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana

- **Steve Oberholtzer**
  Special Agent in-Charge of Law Enforcement and National Eagle Repository

- **Clint Riley**
  Assistant Regional Director for Migratory Birds and State Programs

Looking Back

Eagle Summit 1

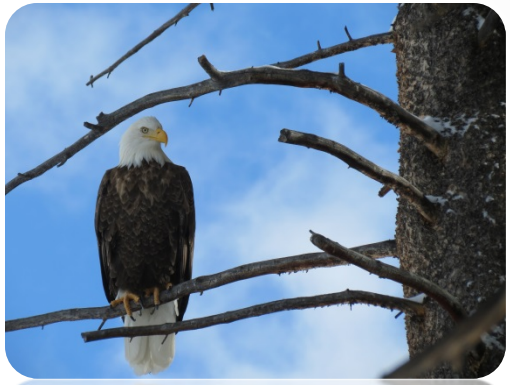
When: March 18, 2010

Where: U.S. Fish and Wildlife Service, Mountain-Prairie Regional Office, Lakewood, Colorado. The Colorado Commission of Indian Affairs served as a co-Host.

Participation: Members of 12 Tribes from the Mountain Prairie Region participated; 4 Tribes from other regions; and 1 Canadian Tribe. In total, 59 Tribal members participated of which 13 were Tribal Council members.

Themes Discussed: Eagle permits and eagle population management; distribution processes and wait times at the Eagle Repository; and laws and regulations governing eagles.

Looking Back



Eagle Summit 2

When: May 2, 2011

Where: Rapid City, South Dakota
Co-hosted by: Oglala Sioux Tribe

Participation: Over 100 Tribal Council members, Fish and Game Directors, Cultural Resource Directors and Tribal Historic Preservation Officers from 29 Tribes as well staff members of other Federal agencies.

Themes Discussed: Actions taken since Eagle Summit I, a variety of law enforcement issues, draft eagle take guidelines for wind energy, non-eagle feather repositories, eagle aviaries, and other eagle discussions.

FWS Office of Law Enforcement (OLE) Goals

Through outreach, education, and the deterrence that enforcement generates, OLE strives to gain voluntary compliance with wildlife protection laws.

The OLE respects the cultural and religious importance that Native Americans have for eagles, and will continue to facilitate their lawful use while curtailing the unlawful take and trafficking of eagles.

Summary of Federal Laws Protecting Eagles

The Bald and Golden Eagle Protection Act (BGEPA) and 50 CFR 22.12 Prohibits the take, possess, transport, sale, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import of eagles.

The BGEPA allows Native Americans to obtain a permit for the taking, possession, and transportation of lawfully acquired bald or golden eagles, or their parts, nests or eggs for religious use.

The Migratory Bird Treaty Act (MBTA) prohibits take, capture, kill, possess, sell, barter, purchase, ship, export, or import of any migratory bird listed in 50 CFR 10, or any part, nest or egg.

Secretary Morton, FWS, and DOJ Policy Regarding Possession

The FWS will not seek or institute legal action against:

Members of federally recognized Tribes who possess, carry, use, wear, give, loan, or exchange among other Native Americans, without compensation, all federally protected birds and their parts or feathers.

Members of federally recognized Tribes who acquire from the wild naturally molted or fallen feathers of migratory birds, without molesting or disturbing such birds or their nests.

Members who wish to transfer feathers or parts to Tribal craftsmen for creation of religious or cultural articles may do so, and craftsmen may be compensated for their work, but the trading of feathers or parts for their work is viewed as bartering and is not allowed.

National Eagle Repository (NER) Changes

In May, 2012, the Service sent a letter to all Tribes announcing its intent to make changes to the NER's distribution processes, and encouraged Consultation with all Tribes having an interest in these changes.

Five Consultation meetings were held around the country, phone consultations were conducted, and written comments were accepted.

National Eagle Repository Changes

An additional 90-day comment period was requested and granted at the NCAI convention, to allow comment on proposed changes.

After careful consideration of all comments received, the FWS intends to implement the following changes to decrease wait times at the NER, starting June 1, 2014.

Limit number of orders for Native American inmates to one order, up to the maximum amount their facility allows.

National Eagle Repository Changes

The FWS will allow a replacement order, not re-order, for inmates whose longtime use of feathers has caused a need for replacement.

The FWS is developing an online re-order application.

The FWS is updating the NER's website to provide more easily accessible information on current wait times, feather order category descriptions with pictures and ordering information.

National Eagle Repository Changes

The FWS updated the application form to more clearly advise applicants that they may order less than the maximum amount of feathers allowed, and consider ordering feathers instead of a whole bird unless a whole bird is necessary to fulfill their religious need.

The FWS ***will not*** require Tribal certification of the applicant's religious need for a whole bird, unless a Tribe passes a law to that effect and provides a copy of that law to the NER.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

The number of eagles that come to the Repository from each state, some states are supplying a lot of the eagles while other states are getting the most orders filled.

Decision

These statistics will be posted on the Repository's website. The FWS has increased outreach to state and federal wildlife authorities regarding the requirement to send eagles to the Repository. Compliance with this requirement is thought to be very good, but outreach will continue.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Federal employees and non-Indians possessing eagle feathers.

Decision

Factsheet on eagle feather possession is available on Repository website. The FWS will continue to enforce violations of the BGEPA, including non-Indians illegally possessing feathers.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Tribes want more interaction and notification when law enforcement agencies work cases on Tribal lands. Tribes would prefer to work cases together with federal agents. They desire the FWS to have a better understanding of jurisdictional and sovereignty issues, and encourage the use of Tribal courts and traditional systems to try and sentence Tribal offenders.

Decision

When it won't affect the integrity of an investigation, Service special agents in Region 6 will coordinate investigations on Tribal lands with Tribal LEOs. When appropriate, we will also recommend restitution to the Tribes for wildlife illegally taken from Tribal lands. The decision to prosecute Tribal members in federal court or refer back to the Tribal court rests with DOJ.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Eagle feathers are restricted to enrolled members of federally recognized Tribes, yet many children on reservations no longer meet the blood quantum required for enrollment.

Decision

No single federal or Tribal criterion establishes a person's identity as an Indian, and government agencies and Tribes have varying eligibility criteria for membership. Membership in a federally recognized Tribe will continue to be the requirement for receipt of an eagle or feathers from the Repository. To deviate from that could allow all non-members to acquire feathers from the Repository, which would exacerbate wait times.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Federal government interference with possession of feathers by veterans and transport to wherever they are serving their country.

Decision

Region 6 OLE has proposed a solution to this problem to FWS Headquarters, a formal policy exempting active duty military members from permit requirements when importing lawfully acquired feathers for non-commercial personal use. Region 6 has also instructed its wildlife inspectors to not take enforcement action on Native American military members returning from deployment with personal use feathers.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Tribes have asked about running eagle repositories, stating Tribes could do it in a culturally-sensitive manner.

Decision

No Tribal repositories will be authorized by the FWS, as it would circumvent the fair and equitable first-come first-served process the National Eagle Repository employs, and would decrease the numbers of eagles the NER has to distribute to applicants, which would lengthen wait times for those Tribes not having a Repository.

Eagle Concerns Raised by Tribes

During the Eagle Summits I and II

Concern

Native Americans need access to non-eagle migratory birds and feathers for cultural and religious use.

SIA, the Comanche Nation non-eagle repository director, Bill Voelker with Temma, the Augur Buzzard.

Decision

Department of Justice and the FWS developed a formal policy to allow Federally Recognized Tribal members to collect naturally molted or fallen feathers. Additionally, two non-eagle repositories were established under a pilot program. They have completed the pilot phase and the FWS is working towards a permanent permitting process for the non-eagle repositories.

Eagle Transport Permits

Members of federally recognized Tribes may obtain a permit to transport lawfully acquired eagle feathers or parts into or out of our country for religious purposes.

These permits are valid for 6 months and are issued by the FWS office in Arlington, VA. They normally take 2-4 weeks for issuance.

Tribal members may forego obtaining a permit for travel between the U.S. and Canada or Mexico. Tribal members must show their Tribal card or 1st Nations card at the border if no permit is obtained.

All wildlife, including eagle parts, must be declared at the border. No commercialization or transfer buy/sell/barter/trade/gift of eagle parts is allowed.

Clint Riley
Assistant Regional Director
Migratory Birds and State Programs

EAGLE TAKE PERMITTING

OVERVIEW AND RECENT DEVELOPMENTS

Eagle Take Permitting

Eagles are protected by:

- Migratory Bird Treaty Act
- Bald and Golden Eagle Protection Act

U.S. Fish and Wildlife Service office roles

- Headquarters Office in Arlington, VA develops policy
- Regional Offices issue permits
  (*Denver office for Mountain-Prairie Region*)
  - Regional policies may differ due to species considerations and geographic differences

Eagle Take Permitting

Prohibited Actions

- No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such birds ***except as may be permitted under terms of a valid permit***

Definition of "Take"

- Migratory Bird Treaty Act: Pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue hunt, shoot, wound, kill, trap, capture, or collect
- Bald and Golden Eagle Protection Act: Same, but also includes shoot at, poison, or molest or disturb

Eagle Concerns Raised by Tribes

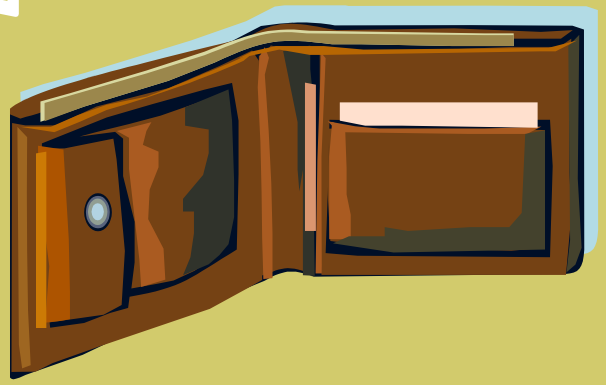
From Previous Eagle Summits

Concern

Permittees are encouraged to carry the permit with them. The FWS should consider replacing paper permits with wallet-size laminated cards.

Decision

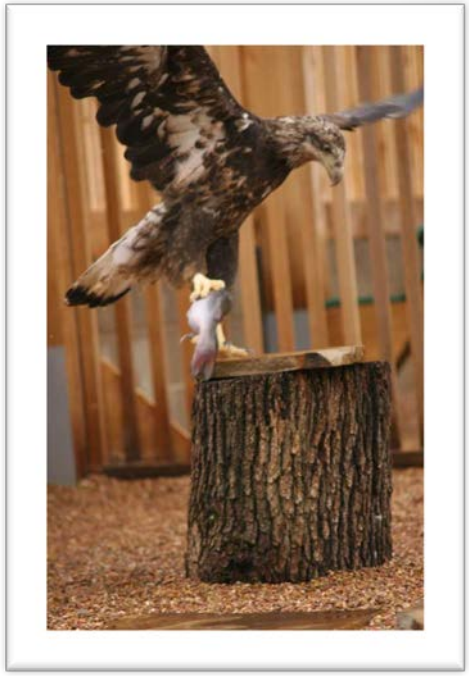
The FWS developed a wallet-sized permit that is issued with an applicants first order for an eagle.



Eagle Take Permitting

Types of Eagle Take Permits

- Scientific and Exhibition
- Falconry
- Depredation
- Native American Religious/Cultural
- Native American Eagle Aviary
- 2009 Regulations:
  - Standard Take Permits (one-time take)
  - Programmatic Take Permits (long-term, recurring take)
  - Nest Removal

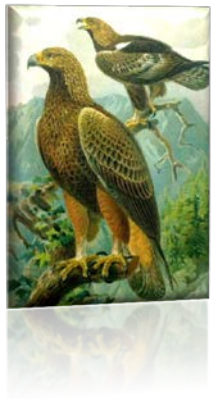


Iowa Tribe of Oklahoma Eagle Aviary

Eagle Take Permitting

2009 Eagle Take Permits

- Became necessary after delisting of bald eagles.
- Bald eagles versus golden eagles:
  - Generally same legal status.
  - In practice, golden eagles more protected because regulations require a biological take threshold.
  - No take of golden eagles currently, unless demonstrate "no net loss."



- Most permits issued to this point are for "disturbance" and very few are lethal take permits
- No programmatic permits issued to this point

Eagle Take Permitting

Current permitting challenges:

- Increases in renewable energy – especially wind and solar – across golden eagle western range
- Limited quantified data on species status and range
- Conservation measures largely untested

FWS has focused additional resources towards addressing some of these challenges

Native American Religious Take Permits

- For Tribal members conducting a demonstrable historic religious ceremony that requires take of eagles from the wild
- Not a means to obtain parts that can be received from the National Eagle Repository
- Take must be compatible with the preservation of eagles (the standard under the Bald and Golden Eagle Protection Act)

Relatively few permits have been issued, or executed, to this point.

Afternoon Consultation Topics

The afternoon session will be an opportunity for consultation on several eagle-related regulatory, policy, or permitting issues:

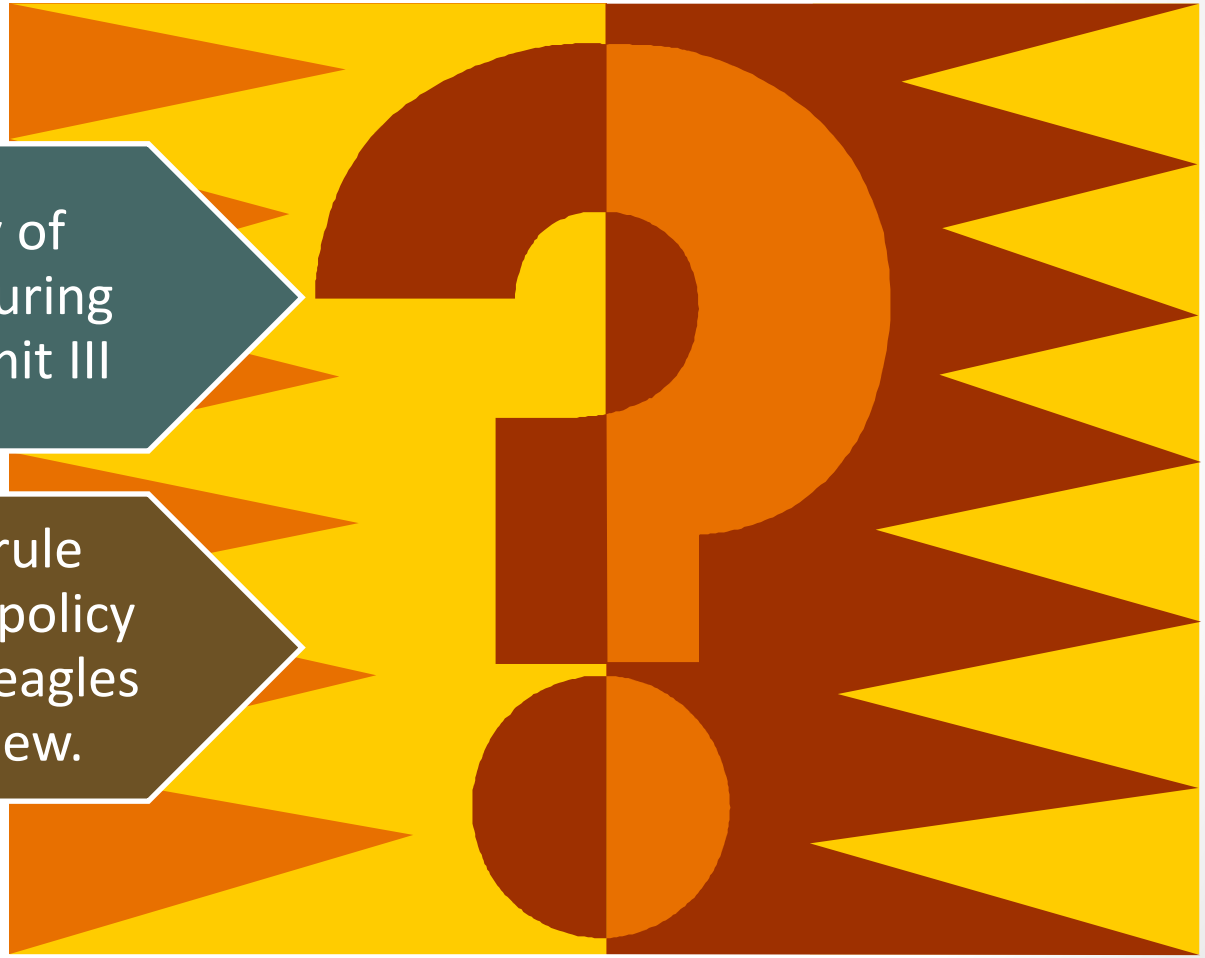
- Management of depredating eagles
- Golden eagle rehabilitation
- Allowing captive propagation of golden eagles
- Policy on eagle carcass disposition
- Revising 2009 eagle take regulations
- Chokecherry-Sierra Madre wind project permit application

*****G2G consultation is open to Official Tribal Representatives speaking on behalf of their Tribe.*

What's Next!

Summary of decisions during Eagle Summit III

On-going rule making and policy changes for eagles under review.



LUNCH BREAK

NATIVE AMERICAN FISH AND WILDLIFE SOCIETY

Rick Williams, Traditional Speaker,

Eagle in Tribal Culture and Story Telling

PART 2, OPTION 1: GOVERNMENT-TO-GOVERNMENT CONSULTATION ON EAGLES

*******G2G consultation is open to Official Tribal Representatives speaking on behalf of their Tribe.***

PART 2, OPTION 2: ROCKY MOUNTAIN ARSENAL NATIONAL WILDLIFE REFUGE AND EAGLE REPOSITORY, PLUS SEIZED PROPERTY TOUR:

The refuge tour will last approximately 1 hour. More than 330 species of animals, including bison, deer, coyotes, bald eagles and burrowing owls inhabit the refuge. The National Eagle Repository will offer a tour of the facility, which is next to the meeting location. The tour will last approximately one hour.

****An additional tour will be offered on Friday, March 21 starting at 9:00 a.m. to allow an opportunity for consultation participants to participate.*

GOVERNMENT-TO-GOVERNMENT CONSULTATION ON EAGLES

Clint Riley, Assistant Regional Director for Migratory Birds and State Programs

Held in conjunction with Eagle Summit III

March 20, 2014 - Denver, Colorado

Government-to-Government Consultation on Eagles

- Requesting input on several potential regulatory, policy, and permitting actions related to eagles
- All are under internal discussion only (unless otherwise noted)
- Consultation is occurring in advance of any public release of a proposed action
- Handouts summarizing each issue are provided

Consultation Topics

1. Management of depredating eagles
2. Golden eagle rehabilitation
3. Allowing captive propagation of golden eagles
4. Policy on eagle carcass disposition
5. Revising 2009 eagle take regulations
6. Chokecherry-Sierra Madre wind project permit application

Management of Depredating Eagles

Now: **Up to now, the FWS has authorized take of depredating eagles that cause risk to human health and safety or to loss of livestock or wildlife.**

Considering:

- Rather than issuing permits to USDA-APHIS, issuing permits to affected livestock producers or landowners, or state or tribal agencies for multiple landowners or for protection of wildlife
- Limiting take to hazing or live-trapping, no lethal allowed
- Establishing a priority order for distributing eagles trapped under this rule (e.g. among Tribes – aviaries; educational programs; falconers; release to the wild; etc.)

Golden Eagle Rehabilitation

Now: **Falconers may request releasable golden eagles from rehabilitators** (*which may mean fewer birds are removed from the wild for falconry*).

Considering: Requiring that releasable golden eagles be released to the wild. Also, allowing rehabilitators to transfer eagle parts and feathers, if unsuitable for distribution to Native Americans, to researchers permitted to use eagle parts and feathers in scientific studies.

Captive Propagation of Golden Eagles

Now: **Captive propagation is not allowed for eagles, but is for other raptors** *(most often for falconry purposes).*

Considering: Allowing golden eagles (not bald eagles) to be bred in captivity, only for persons otherwise permitted to possess golden eagles (Native Americans, public museums/zoos/scientific societies, and falconers).

Eagle Carcass Disposition

Now: **Most eagle carcasses** *(except those kept as evidence, or research subjects)* **are sent directly to the Eagle Repository for distribution.**

Considering: Allowing some eagles to be sent directly to the National Wildlife Health Center in Madison, WI, for discrete sampling of eagle parts not typically requested by tribes *(tissues/organs, damaged broken feathers, some bones),* to improve understanding of mortality, contaminant loads, and genetic structure of populations. After samples are taken, eagles will be promptly sent to the Repository for distribution to tribes.

2009 Bald and Golden Eagle Take Regulations

Regulations established in 2009 allow for incidental and nest take:

- standard take permits – one time take
- programmatic permits– long term, recurring take
  - 2013 amendment allows these permits to be valid up to 30 years, with 5-year required reviews

Take permit applications must:

- be 'consistent with goal of stable or increasing breeding populations' *(no net loss)*
- be part of an otherwise lawful activity
- be avoided & minimized to maximum extent practicable and
- have an Eagle Conservation Plan

2009 Bald and Golden Eagle Take Regulations

Tribal Input

- Tribes raised concerns about various provisions in these new regulations when they were originally established
- Concerns ranged from issues of when and to whom permits may be issued, to how the FWS engaged with Tribes in updating policies and creating the regulations
- The FWS retains records of this input, and it is being incorporated into ongoing review of the regulations
- Tribes are encouraged to share any concerns, whether or not they have previously been voiced

2009 Bald and Golden Eagle Take Regulations

Considering:

- Changing issuance language/terminology *(e.g. removing the different criteria for Standard versus Programmatic permits)*
- Changing conditions for compensatory mitigation: when it is appropriate, and what kind of mitigation is adequate
- Revising the preservation standard *(currently "consistent with the goal of stable or increasing breeding populations")*

2009 Bald and Golden Eagle Take Regulations

Considering:

- Reviewing population management objectives for eagles
- Determining the geography of consultation for a given project *(i.e. which tribes are "affected tribes")*
- Establishing required data standards to adequately assess risk to eagles from particular activities
- Other issues?

2009 Bald and Golden Eagle Take Regulations

Nest Take Rule Revision Considerations:

- More clearly define “nest,” including the definitions of Inactive and Active nests
- Address whether and when mitigation is required if removing a nest
- Add “protection of wildlife” to the reasons that an inactive eagle nest may be removed
- Reconsider the requirement that suitable alternative nesting habitat be available to the nesting eagles before nest take is allowed
- Reconsider the requirement that eggs or nestlings must be transferred to a rehabilitation facility; this could become a permitting requirement.

2009 Bald and Golden Eagle Take Regulations

Additional opportunities for input concerning revision of 2009 Take rule:

- Public scoping sessions later this spring *(five locations likely to include Denver and D.C.)*
- Public comment through NEPA process
- Other opportunities for Tribal input and consultation

Important targets for revision of 2009 Take rule:

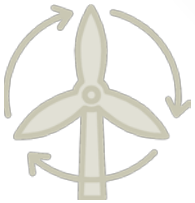
- Proposed rule by mid 2014 and
- Final rule by end of 2014

2009 Bald and Golden Eagle Take Regulations

Discussion

- Standard permits
- Programmatic permits
- Nest take permits
- Other issues?

Chokecherry-Sierra Madre Wind Energy Project



- Proposed wind development project in south-central Wyoming, encompassing approximately 250,000 acres southwest of Rawlins, operated by Power Company of Wyoming (PCW)
- When fully constructed, may consist of 1,000 wind turbines
- FWS anticipates receiving an application for a programmatic eagle take permit for Phase I, consisting of 500 turbines
- FWS is undertaking NEPA review through an Environmental Impact Statement (EIS), with a Draft EIS likely to be available in summer 2014
- A permit may be issued only if an Eagle Conservation Plan demonstrates measures to avoid take, and that any remaining unavoidable take is mitigated with offsetting eagle conservation actions

Government-to-Government Consultation on Eagles

Follow-up comments or questions:

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