

U.S. FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT FOR CATEGORICAL EXCLUSION

ISSUANCE OF EAGLE DEPREDATION PERMITS

TO AUTHORIZE HAZING OF EAGLES

Within the spirit and intent of the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500-1508), the Department of the Interior's (DOI's) regulations implementing NEPA (43 CFR 46), DOI's Departmental Manual implementing NEPA, and relevant agency policies, I have determined that the following proposed action is categorically excluded from NEPA documentation requirements, and that no extraordinary circumstances apply.

Proposed Action

The U.S. Fish and Wildlife Service (Service) is considering whether to issue federal eagle depredation permits (EADP) pursuant to the Bald and Golden Eagle Protection Act of 1940 (BGEPA; 16 USC 668-668d, 54 Stat. 250 as amended) for the harassment of eagles. Permits are voluntary and permittees assume all liability and responsibility for the conduct of any activity conducted under the authority of a permit, if issued, pursuant to 50 CFR 13.50.

The Service's Northeast (Region 5) Migratory Bird Permit Office (MBPO) is the regional federal office responsible for the conservation of eagles through implementation of the BGEPA and its governing regulations at 50 CFR 22. This responsibility includes issuance of permits for activities related to eagles that would otherwise be unlawful. The need for the Service's permitting action is to fulfil the Service's obligation to respond to applicant requests for permits under BGEPA.

The issuance of a federal permit is considered a federal action under the NEPA. The EADPs we are considering to issue would authorize the non-lethal take of eagles through hazing for human or eagle health and safety. These permits will not authorize lethal take of eagles or disturbance of eagle nests. Permits would be consistent with applicable federal regulations at 50 CFR 10, 13 and 22. In addition to general migratory bird permit conditions specified at 50 CFR 13, EADPs require adherence to the conditions enumerated at 50 CFR 22.23(b). EADPs that only authorize disturbance associated with hazing eagles from the vicinity of the area associated with depredation activities, may be valid for up to five years (50 CFR 22.23(d)).

Eagles that cause or threaten to cause damage to commercial, public or private property are often referred to as "depredating" birds. The term was first applied in the context of birds preying upon fish farms and agricultural crops, but the concept now extends to other types of property damage or when birds, including eagles, cause health or safety risks. Harassment represents one of several forms of take authorized under 50 CFR 22.23 to address depredating eagles. BGEPA defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." The Act in turn defines "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

Hazing, as authorized under the proposed permits, may involve use of loud noises or highly visible activities to deter eagles from using hazardous areas of permittee property. Because these activities can involve the pursuit and molestation of eagles, they have the potential to constitute take under BGEPA.

While 50 CFR 22.23(d) refers to authorization of “disturbance associated with hazing eagles,” the hazing under the proposed permits will not result in injury to eagles; decrease in productivity through substantial interference in breeding, feeding, or sheltering behavior; or nest abandonment through substantial interference in any of these same essential behaviors. Consequently, the proposed activities do not constitute disturbance resulting in “take” as defined under 50 CFR 22.3. Rather, eagles displaced from hazardous locations under the proposed permits will remain unharmed both in terms of general productivity and physical wellbeing. As a result, the proposed action of issuing these permits is not expected to reduce the local or regional eagle populations.

These permits will require the applicant submit annual records of hazing activities, either through Form 3-202-11 or a report with comparable level of detail and a signed certification statement. Columns in Form 3-202-11 for killed and relocated birds are not relevant to the proposed permits. Additionally, the number of hazing events will not be collected for calculation in any take threshold because, as previously detailed, we do not expect the hazing to result in appreciable loss in productivity, only spatial displacement and temporary changes in behavior. The Service will use annual reports to assess the effectiveness of the permittees hazing program and to develop a broader understanding of the nature of this safety issue.

The criteria for EADPs are straightforward, focusing on the content of the application and mandatory permit conditions; The Service may include additional conditions at its discretion. Applicants must comply with the Service’s general permitting requirements at 50 CFR 13 and provide the following additional information as listed at 50 CFR 22.23(a):

- (1) Species and number of eagles proposed to be taken;
- (2) Location and description of property where taking is proposed;
- (3) Inclusive dates for which permit is requested;
- (4) Method of taking proposed;
- (5) Kind and number of livestock or domestic animals owned by applicant, if applicable;
- (6) Kind and amount of alleged damage, or description of the risk posed to human health and safety or eagles; and
- (7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

According to 50 CFR 22.23(c), the Service will not issue a permit to take bald or golden eagles unless it has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such a determination, the Service will consider the following criteria, which are addressed here.

Assessment

(1) The direct or indirect effects of issuing such permits would be likely to have upon the wild population of bald or golden eagles.

These permits do not authorize eagle hazing that is likely to substantially disrupt normal breeding, feeding, or sheltering behaviors. As such, no potential loss of eagle productivity is expected, nor are the actions authorized by these permits expected to lower local or regional eagle populations.

(2) Whether evidence shows that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit and the injury complained of is substantial, or that bald or golden eagles pose a significant risk to human or eagle health and safety.

These permits authorize hazing of eagles that pose a significant risk to human or eagle health and safety. Eagles engaging in nonbreeding behavior in the vicinity of airports or airstrips represent a bird strike risk that cannot be reasonably abated without hazing the eagles from the area. The behavior of bald eagles at these locations places them at special risk of collision with aircraft. When congregating, they often engage in behaviors such as chasing that may lower their vigilance for aircraft. Additionally, they often use sensitive areas of airports such as airstrips for loafing and feeding. Due to their size (females can weigh up to nearly 14 pounds; Buehler 2000), bald eagles can cause significant damage to aircrafts and risk to human safety during collision events. According to Dolbeer and Wright's analysis of the collision data from the Federal Aviation Administration (2009), 45% of reported collisions with bald eagles (1990-2007) damaged the aircraft, making them the ninth most hazardous species in terms of damage rate. Given the speed and size of aircraft, these events often severely injure or kill the bald eagle involved (FAA 2017).

Although golden eagles are generally less prevalent than bald eagles throughout Region 5, they are present throughout much of the region as migrants and wintering residents (Katzner et al. 2012). Given that they are similar in size to bald eagles, golden eagles pose a comparable threat to aircrafts and human safety during collision events (Washburn et al. 2015). Therefore, in the relatively rare instances where golden eagles occur at hazardous sites in the Eastern U.S., such occasional presence at airports, they pose a significant threat to human and eagle health and safety.

(3) Whether the only way to abate or prevent the damage caused by the bald or golden eagle is to take some or all of the offending birds.

Permits will not authorize lethal take of any offending eagles or removal of any eagles from the wild population. Instead, we will limit our authorization to the harassment of eagles. As detailed above, we do not expect this hazing activity to significantly impact the productivity of eagles. We have concluded that this harassment is likely to protect human or eagle health and safety without causing impacts to eagle populations. This finding has historically been supported under the USDA's Form 37.

Categorical Exclusion

The Department of the Interior regulations implementing NEPA reiterates the rules promulgated by CEQ with respect to categorical exclusions [73 Fed. Reg. 61292, 61305 (October 15, 2008)]. Under the DOI regulations, “categorical exclusion means a category or kind of action that has no significant or cumulative effect on the quality of the human environment” [43 CFR 46.205 (citing the CEQ regulations at 40 CFR 1508.4)]. The DOI lists agency actions subject to categorical exclusions at 43 CFR 46.210. Furthermore, the preamble to the regulations also notes that individual bureaus of the Department (e.g., the Service), maintain their own lists of categorically excluded activities. [73 Fed. Reg. 61292, 61304-05 (October 15, 2008)]. The regulations explain that where an action is covered by a categorical exclusion, the bureau is not required to prepare an environmental assessment or an environmental impact statement. It also states that:

“[a]ny action that is normally excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in Section 46.215; if it does, further analysis and environmental documents must be prepared for the action (43 CFR 46.205(c)(1)).

A categorical exclusion applies here. The DOI Manual includes a chapter regarding the USFWS’ NEPA procedures. This includes a listing of Service-specific categorical exclusions (516 DM 8.5). Section 8.5(C)(1) of Chapter 516 designates the following as categorically excluded:

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, *when such permits cause no or negligible environmental disturbance*. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

Here, we find that the activities under the proposed eagle depredation permits would cause no or negligible environmental disturbance, and that a categorical exclusion is appropriate. This action does not authorize any ground disturbance or alteration of human structures. Additionally, this action does not authorize lethal take of eagles, removal of eagles from the wild population, nest removal, or the disturbance of eagle nests. Consequently, we do not expect this action to eliminate eagles from the local or regional population or to significantly impact eagle productivity. The action is therefore compatible with the preservation of eagles at both the local and regional/Eagle Management Unit scales (see USFWS 2016 for further detail).

Nevertheless, we examine the 12 extraordinary circumstances identified by CEQ and the DOI regulations to demonstrate why no further environmental documentation is required.

Extraordinary Circumstances

The 12 extraordinary circumstances identified by CEQ and the DOI regulations are listed below, along with analysis regarding their applicability:

1. Have significant impacts on public health and safety

The proposed action is intended to reduce the risk posed to human or eagle health and safety, including aircraft-eagle collisions in the vicinity of airports. These permits will not cause significant impacts on public health and safety, but will mitigate risk to eagles and humans.

2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

The proposed action will not cause ground disturbance, any physical destruction or damage to property, or any alterations of property, wildlife habitat, or landscapes, nor does it involve the sale, lease, or transfer of ownership of any property. Accordingly, there are no unique characteristics such as park lands, prime farm lands, wetlands, wild and scenic areas, historic properties, historic or cultural resources, or other ecologically critical areas that will be significantly affected.

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

The effects of hazing activities authorized under EADPs are not, in and of themselves, controversial. Nor are the very limited impacts on the human environment controversial. The Service's regulations explicitly contemplate this permitted activity. Moreover, the fact that some disagree with the proposed management activities does not render the effects controversial.

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

The proposed action will not produce highly uncertain or potentially significant environmental effects. The risks associated with hazing eagles are not unique or unknown. Although the degree of success may vary depending on the personalities and tolerances of individual eagles, the range of responses is well-studied and understood.

5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The proposed action will not establish a precedent for future action. The impacts of this proposed action may be considered in the future review of other permit applications. But those decisions will necessarily be made on their own merits, considering the relevant facts for a particular site, including abundance, habitat features, eagle use, foraging opportunities, and the availability of other management techniques. As such, while potentially relevant, the permitting decisions at issue here will not be wholly precedential.

6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

The proposed action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

The proposed action will not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places. See discussion above, factor (2).

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for those species.

The proposed action is not anticipated to have a significant impact on species listed, or proposed to be listed, on the List of Threatened and Endangered species (T&E) or have significant impacts on designated Critical Habitat for those species. The action does not authorize take of T&E species nor does the permit authorize modification of critical habitat for any T&E species. Additionally, due to the limited nature and scope of the actions authorized under these EADPs, as described above, we anticipate issuance to have no effect, even incidental, on T&E species or their critical habitat. In any case where the proposed permitted activity may adversely affect T&E species or modify their critical habitat, the Division of Migratory Birds will consult with Ecological Services, pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (16 USC 1531 – 1544) and 50 CFR 402.

9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.

The proposed action will not violate any laws or requirements for the protection of the environment. The validity of each permit will be conditioned upon strict adherence to all applicable foreign, state, local, tribal or other federal laws.

10. Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).

The proposed action will have no effect on low income or minority populations. In fact, the issuance of these permits may reduce economic hardship from eagle-related property loss or damage.

11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).

The proposed action will have no impact on ceremonial use of Indian sacred sites. See factor (2) above.

12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

Due to the limited nature of the permitted activities, including lack of ground disturbance, these permits will not contribute to the introduction, existence, or spread of noxious weeds or non-native, invasive species.

Public Involvement/Interagency Coordination

Neither BGEPA nor its implementing regulations require public comment or input prior to issuing a permit. The DOI's own NEPA regulations also do not require public input for actions that qualify for a categorical exclusion, or when producing an environmental assessment.

Supporting Documentation

Support documents for this determination include relevant office file material, including but not limited to permit application, the applicant's annual reports, and official correspondence detailing interagency coordination, Service Manual Chapters (Parts 720-729) Migratory Bird Management (<https://www.fws.gov/policy/manuals/>), Division of Migratory Bird Permit Memorandum Series (<https://www.fws.gov/birds/policies-and-regulations/permits/permit-policies-and-regulations.php>) and the following:

Buehler, D.A. 2000. Bald Eagle (*Haliaeetus leucocephalus*), version 2.0. In The Birds of North America (P. G. Rodewald, editor). Cornell Lab of Ornithology, Ithaca, New York, USA. <https://doi.org/10.2173/bna.506>

Dolbeer, R.A. and Wright, S.E., 2009. Safety Management Systems: How Useful Will the FAA National Wildlife Strike Database Be? *Human-Wildlife Conflicts* 3(2): 167-178.

Katzner, T., Smith, B.W., Miller, T.A., Brandes, D., Cooper, J., Lanzone, M., et al. 2012. Status, Biology, and Conservation Priorities for North America's Eastern Golden Eagle (*Aquila Chrysaetos*) Population. *The Auk* 129(1): 168-176.

USFWS. 2016. Programmatic Environmental Impact Statement for the Eagle Rule Revision. USFWS. Washington, D.C.

FAA. 2017. FAA Wildlife Strike Database; <http://wildlife.faa.gov/>. Accessed December 1, 2017.

Washburn, B.E., Begier, M.J., and Wright, S.E., 2015. Collisions Between Eagles and Aircraft: an Increasing Problem in the Airport Environment. *Journal of Raptor Research* 49(2): 192-200.

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