

U.S. FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT FOR CATEGORICAL EXCLUSION

ISSUANCE OF CERTAIN MBTA and BGEPA PERMITS FOR THE

SALVAGE and POSSESSION OF DEAD MIGRATORY BIRDS and EAGLES

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

Proposed Action and Alternatives

The Service is considering whether to issue federal permits pursuant to MBTA and BGEPA for the legal acquisition of wild specimens by non-lethal salvage (the taking of dead migratory birds, their parts and abandoned nests from the wild), and the possession of dead migratory birds including eagles, their parts and nests (hereinafter referred to as DMB). Permits are voluntary and permittees assume all liability and responsibility for the conduct of any activity conducted under the authority of the permit, if issued, pursuant to 50 CFR 13.50.

The United States Fish and Wildlife Service (Service), Northeast Region 5(Region 5), is the federal agency responsible for the conservation of migratory birds through implementation of the Migratory Bird Treaty Act of 1918 (16 United States Code 703-712 as amended) (MBTA) and the Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668d, 54 Stat. 250 as amended) (BGEPA) and their governing regulations under Title 50 in the Code of Federal Regulations [CFR], Parts 21 and 22 respectively. This includes issuance of permits for activities related to migratory birds and 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 MBTA and BGEPA.

The issuance of a federal permit is considered a federal action under the NEPA. The subset of permits in question would authorize the salvage, import/export and possession of DMBs for various reasons including but not limited to conservation education, taxidermy, Native American religious use, and scientific research. Permits would be consistent with applicable federal regulations at 50 CFR Parts 10, 13, 21 and 22. In particular, permits for migratory birds and eagles<sup>1</sup> are issued pursuant to 50 CFR 21 and 22 as follows:

DMB Permit Issuance Table

<b>Permit Name:</b>	<b>Types of Activity Authorized:</b>	<b>50 CFR:</b>
Migratory Bird Import Export	Import/Export to and from the U.S.	21.21
Scientific Collecting	Possession, Salvage	21.23
Taxidermy	Possession	21.24
Special Purpose	Salvage, Possession	21.27
Eagle Exhibition	Possession	22.21
Eagle Scientific Collecting	Salvage, Possession	22.21
Eagle Indian Religious	Possession	22.22

<sup>1</sup> Note that for eagles, the presumption is that dead eagle carcasses/remains will be forwarded to the National Eagle Repository for possession and disposition, but that FWS-Region 5 does renew some permits for persons possessing dead eagles or their parts under grandfathering provisions of the law. Possession permits may also be appropriate in the limited circumstance that the Repository declines to accept eagle carcasses/remains or parts.

Permit tenure would not exceed five-years. Applicants would be required to adhere to the standard permit conditions and all specific conditions of their permit. Annual reports may be required where appropriate to monitor compliance and effectiveness. These measures and other requirements are detailed in the Application package approved by the Office of Management and Budget. Permits would be issued for any migratory bird species listed at 50 CFR § 10.13 “List of Migratory Birds” which can be found at:

<http://www.ecfr.gov/cgi-bin/text->

[idx?SID=0b0cb0ee6f60bec5669912e3b57bd1ae&mc=true&node=pt50.1.10&rgn=div5#se50.1.10\\_113](http://www.ecfr.gov/cgi-bin/text-idx?SID=0b0cb0ee6f60bec5669912e3b57bd1ae&mc=true&node=pt50.1.10&rgn=div5#se50.1.10_113)

Should the Service take no action with regard to these permits, the Service would be failing to fulfill its obligations under MBTA and BGEPA, which may result in unlawful salvage and possession of DMBs by members of the public and increases in their legal liability for violations of MBTA and BGEPA. This is not consistent with the Service’s mission in “working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people” (USFWS 2013).

#### Categorical Exclusion

The DOI regulations implementing NEPA reiterate 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 46.25 (citing the CEQ regulations at 40 CFR 1508.4)). The DOI lists agency actions subject to categorical exclusions at 43 CFR 46.210. In addition, the preamble to the regulations also notes that individual bureaus of the Department (e.g., the USFWS) 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.

A categorical exclusion applies to this category of permitting actions. The DOI Manual includes a chapter regarding the USFWS’ NEPA procedures. This includes a listing of USFWS-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 this proposed category of migratory bird permits would cause no or negligible environmental disturbance, and that a categorical exclusion is therefore appropriate. These permits will not authorize any ground disturbance activities and have no or negligible effect on water, wetlands, soils, vegetation, wildlife, land use, historic and cultural resources, or socioeconomics. Of importance in reaching this finding is the fact that the scope of permitted activity is limited to the salvage and possession of already dead migratory birds or their parts. Salvage is the picking up of or retrieval of items. The salvage of DMBs typically occurs in a small area involving walking and no mechanized or heavy equipment. The impacts are temporary in nature and non-invasive such as the trampling of vegetation in a small area or the temporary flushing of wildlife. Topography and weather can both limit a person’s ability to salvage DMBs. Possession is the keeping or retention of something. The possession of DMBs is typically for conservation education, scientific research, or cultural

purposes and are typically maintained indoors in a static condition such as museums, libraries and nature centers. The salvage and possession of DMBs will result in no or negligible environmental disturbance since the impacts are temporary and minimal.

The Department's NEPA implementing regulations also provide 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)).

Here we explain that none of these 12 extraordinary circumstances apply.

**1. Have significant impacts on public health and safety**

These permits will not have a significant impact on public health and safety. Generally accepted practices for handling deceased migratory birds or their parts have been established for many years. Adherence to these practices will help avoid or reduce impacts to public health and safety, such as the risk of transmission of disease, to a no or negligible effect. For instance the wearing of protective gear such as gloves helps prevent the transmission of bodily fluids which is one way of contracting diseases. Additionally, the removal of DMBs from water bodies, parks and public areas reduces the risk of public contact with possibly diseased carcasses/remains.

**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.**

Impacts to historic or cultural resources, recreation lands, water quality, and wetlands will be avoided or minimized to a no or negligible level through the permit requirements of obtaining landowner permission and the strict observance of all applicable state, local, tribal or other federal laws. The permits will not authorize any ground disturbance.

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

The non-lethal salvage and possession to be authorized under these permits are long established and are not in and of themselves controversial. Nor are the very limited impacts on the human environment controversial. The USFWS regulations explicitly contemplate this permitted activity. The fact that some may disagree with the proposed activities that may have caused the death of the birds being salvaged or possessed does not render the effects of salvage or possession controversial.

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

Permit issuance will not produce highly uncertain or potentially significant environmental effects. The Service has a long history of issuing these types of permits. Since the birds are already dead and their nests are inactive, no take from the wild will occur that would affect the bird population, and the impacts to the human environment, directly and indirectly are non-existent or negligible as has been explained.

**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 actions with potentially significant environmental effects. As described above, this category of permits will result in no or negligible environmental effects. The Service is responsible for the management of migratory birds and has a long history of issuing this type of permit.

**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.

**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 have no impacts on properties listed, or eligible for listing, on the National Register of Historic Places. In fact, land owner permission is a requirement of the permit as well as strict adherence to all applicable foreign, state, local, tribal or other federal laws.

**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 Endangered or Threatened Species (T/E) or have significant impacts on designated Critical Habitat for those species. These permits do not authorize salvage of T/E species, therefore their collection or possession with regards to salvage activities is not at issue. These permits potentially enhance the public's exposure to T/E species that are proposed for listing by preserving them for future use by the American people by utilizing them for conservation education. Salvage of non-ESA listed migratory birds typically involves walking and no mechanical or heavy equipment for collecting DMBs. These salvage activities have the potential to temporarily annoy or displace T/E species in the vicinity, but they are not likely to rise to the level of take through "harm" and "harassment" as those terms are defined under ESA and its implementing regulations. Therefore, given the temporary and non-invasive techniques used, no take of ESA listed species is anticipated so the issuance of these permits would have minimal or a negligible, if any, effect on T/E species or their critical habitat. Moreover, because the salvage and possession do not disturb land nor alter water or vegetative resources, these activities will not modify critical habitat for ESA-listed species in any way. In cases where such "no effect" determinations are inappropriate, and 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 ESA and 50 CFR Part 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 permits require strict adherence to all applicable foreign, state, local, tribal or other federal laws in order for its coverage to be effective.

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

The proposed action will not have a disproportionately high or adverse effect on low income or minority populations. In fact, the issuance of these permits may allow for economic gain for the applicants and increase the public's exposure to migratory birds by connecting people with nature consistent with a Service priority. For example, taxidermists are allowed to charge for their taxidermy services and possession applicants are allowed to charge for the conservation education programs they conduct and in

some circumstances are allowed to accept charitable donations. Conservation education programs are given in a variety of public venues such as schools and museums which may be the only opportunity that low income or minority populations have to experience wildlife up close and personal without costs.

**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. In fact, land owner permission is a requirement of the permit as well as strict adherence to all applicable foreign, state, local, tribal or other federal laws.

**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).**

These permits will not authorize ground disturbance. The limited nature of the permitted activities will not contribute to the introduction, existence, or spread of noxious weeds or non-native, invasive species.

Permits/Approvals

No additional permits are required for this proposed action.

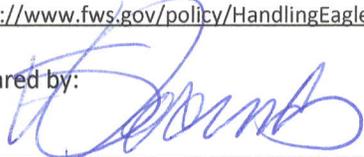
Public Involvement/Interagency Coordination

Neither the Migratory Bird Treaty Act nor its 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 Documents

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>), Service Eagle Handling and Distribution Handbook (<https://www.fws.gov/policy/HandlingEaglesHB.pdf>).

Prepared by:



\_\_\_\_\_  
Wildlife Compliance Specialist  
Division of Migratory Birds

4/24/18

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(Date)

Approved by



\_\_\_\_\_  
Permit Branch Chief  
Division of Migratory Birds

4/25/18

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(Date)