



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

5275 Leesburg Pike, MS: MB
Falls Church, VA 22041



FINDING OF NO SIGNIFICANT IMPACT

Decision to Finalize the U.S. Fish and Wildlife Service's Proposed Regulation, With Modifications, to Amend Existing Regulations Pertaining to Eagle Incidental Take Permits and Eagle Removal Permits

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.), the U.S. Fish and Wildlife Service (hereafter, Service) prepared an Environmental Assessment (EA) in January 2024, tiered to the Service's Programmatic Environmental Impact Statement for the Eagle Rule Revision (PEIS) issued in December 2016. This Finding of No Significant Impact incorporates the EA by reference, which is available at <http://www.regulations.gov> under Docket No. FWS-HQ-MB-2020-0023. The EA supports and informs the Service's decision to finalize our proposed rulemaking to amend existing regulations pertaining to eagle incidental-take permits and eagle nest-removal permits by analyzing the environmental impacts of three Action Alternatives, as well as the No Action Alternative. The purpose of this rulemaking is to increase the efficiency and effectiveness of eagle permitting, improve clarity for the regulated community, and increase the conservation benefit for eagles. This purpose meets our need to improve the current regulatory framework to address the relatively small number of projects applying for authorization to incidentally take eagles. None of the Action Alternatives for this rulemaking alter the management framework for eagle permits set forth in the PEIS to ensure authorized take is compatible with the preservation of bald eagles and golden eagles as required by the Bald and Golden Eagle Protection Act (hereafter Eagle Act; 16 U.S.C. §§ 668-668d) and defined at 50 Code of Federal Regulations (CFR) 22.6. Thus, we do not expect any of the alternatives to have a significant impact on bald and golden eagles, or other resources. The decision to finalize this rulemaking is a federal action. We summarize the EA's analysis and conclusions and explain our finding of no significant impact below.

The EA considered four alternatives:

Alternative 1: No Rulemaking to Amend Eagle Regulations (No Action);

Alternative 2: General Permits Available for Wind Energy Facilities; Eligibility Based on Distance from Nests; Flat Fee for Mitigation;

Alternative 3: General Permits Available for Wind Energy Facilities; Eligibility Based on Relative Abundance and Distance from Nests; Mitigation Fee Based on Hazardous Area;

Alternative 4: Implement Alternative 3 for Wind Energy Facilities; Create Additional General Permits for Power Line Entities, Activities Likely to Cause Nest Disturbance, and Nest Removal Activities (our Preferred Alternative).

Other alternatives were considered but rejected as not meeting our purpose and need as described in Section 2.1 of the EA (*see* EA Section 3.4).

BACKGROUND

The Service promulgated regulations establishing two new permit types for the take of eagles and eagle nests in 2009 (74 FR 46836, 11 September 2009, “2009 Eagle Rule”). The regulations were most recently revised in 2016 (81 FR 91494, 16 December 2016, “2016 Eagle Rule”). The purpose of previous incidental-take permit regulations was to provide a mechanism to authorize the take of bald eagles and golden eagles that met the following criteria: is compatible with the preservation of the bald eagle and the golden eagle; necessary to protect an interest in a particular locality; is associated with, but not the purpose of, the activity; and cannot practicably be avoided. A full background of the eagle incidental-take regulations prior to the 2016 Eagle Rule can be found in the PEIS at Section 1.2.

The Eagle Act provides the Secretary of the Interior with the discretion to authorize the taking of bald eagles and golden eagles under specific circumstances subject to a finding that “the take is compatible with the preservation of the bald eagle and the golden eagle” (16 U.S.C. 668a). This statutory requirement ensures the continued protection of the species while allowing for some impacts to individual eagles. To clarify the statutory language and aid in evaluating whether authorized take meets this statutory standard, the 2009 Eagle Rule established a regulatory “preservation standard,” which clarified that “compatible with the preservation of the bald eagle or the golden eagle” means “consistent with the goal of stable or increasing breeding populations.” The 2016 Eagle Rule updated that definition, defining the preservation standard to mean “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species.” The Service is not proposing changes to this 2016 preservation standard definition and none of the alternatives described and analyzed in this EA alter the management framework for eagle permits set forth in the PEIS.

The Service proposed the current rulemaking and issued a draft EA on September 30, 2022 (87 FR 59598). The purpose of this rulemaking is to improve the system of regulations for authorizing eagle incidental take and eagle nest take. The Service needs to improve the current regulatory system because, despite previous efforts to improve the permitting program in 2016, participation by some industries remains low. Projects that take eagles or have a significant risk of taking eagles continue to be built and operated without a permit. This has resulted in an increase in the number of projects across the landscape that take eagles without implementing the avoidance and minimization (A&M) measures, mitigation, and monitoring activities that would be required under an incidental-take permit. When such projects operate without a permit, eagle conservation opportunities and opportunities to learn about project impacts to eagles are lost. As with our rule-revision efforts in 2016, the Service’s purpose here is to increase the conservation benefits provided to both eagle species by encouraging increased participation in eagle

incidental-take permitting and improving our efficiency in reviewing permit applications and administering permits.

To achieve this purpose and remain consistent with the Eagle Act's preservation standard (defined at 50 CFR 22.6), the Service developed three reasonable alternatives (Action Alternatives) that meet the following criteria:

1. Amend aspects of the existing permitting process that were viewed as barriers to participation by members of the regulated community or that created unnecessary work for the Service, thus improving conservation for both eagle species throughout their ranges by increasing the number of current and future projects and actions on the landscape that are operating under a permit and implementing conservation measures.
2. Prioritize our resources on processing permit applications for projects that have the highest or most uncertain risks to eagles, thus focusing eagle conservation efforts where it will be most beneficial to eagles.
3. Reduce Service resources spent processing permit applications for projects where risk to eagles is likely to be low and more predictable, and where permit application review and conditions can be standardized.
4. Allow for consistent and efficient administration of the eagle incidental-take-permitting program by Service staff, and increased predictability and certainty for applicants.
5. Encourage siting of wind energy facilities to avoid areas of the country where eagle risk and potential impacts to eagle populations are high.
6. Use the best available science and data.

CHANGES ACROSS ALL ACTION ALTERNATIVES

Under all Action Alternatives, the Service introduces the concept of general permits. General permits are automated permits that the Service will process and issue electronically with no site- or project-specific review. These permits will only be available when we determine that site- or project-specific analysis is not necessary to comply with the Eagle Act's preservation standard. General Permit Programs (GPPs), under which general-permit eligibility will be defined and under which general permits can be issued, would be developed for different activity types. While we would issue general permits to individual organizations or persons, each general permit authorized will provide standard authorizations and requirements for each permittee under the applicable GPP.

The Service's purpose for introducing a permitting framework that includes general permits is three-fold:

1. To streamline permit issuance for projects that the Service can pre-determine are unlikely to have relatively high or uncertain impacts on eagles. This will allow the Service to focus limited staff and resources on activities or projects that may have high or uncertain risks to eagles, with the goal of increasing the number of projects on the landscape that operate under permits.
2. To provide applicants and the Service with predictability, certainty, and increased efficiency in the application process and implementation of permits.
3. To foster consistency in eagle-take permitting across Service regions and offices, and between individual permits.

Because general permits do not require site- or project-specific review, application-review times for projects or activities that qualify for a general permit will be eliminated. Additionally, we expect that issuing general permits for a subset of activities will free up time and resources for Service staff to work on relatively fewer specific permits, which should result in much faster application-review times for specific-permit applications. We anticipate both of these general-permit benefits will increase the number of applications we receive and the number of permits we issue and, thus, the amount of conservation (through implementation of A&M measures and mitigation) we achieve for eagles.

The lack of site- or project-specific review for general permits also means that the Service will not estimate the specific impacts of any one activity authorized under a general permit on the applicable eagle management unit (EMU) and local area population (LAP) prior to permit issuance. Therefore, we will build into general-permit conditions measures designed to ensure each GPP is consistent with our preservation standard and eagle-population-management objectives set forth in the PEIS. These measures are described below and, in most cases (when referenced), are based on analysis described in Appendix A of the EA. Additionally, we will require each general permittee for wind energy facilities and power lines to pay an administration fee to fund the Service's costs associated with the administration of a GPP for wind energy projects, including validating and analyzing concurrent monitoring methods and data to ensure GPP consistency with our preservation standard. This fee is \$2,500 per application for each distributed and community-scale wind energy facility or non-investor-owned power line entity and \$10,000 per application for each utility-scale wind energy facility or investor-owned power line entity. If analysis of the best available information, including data from required concurrent monitoring, suggests a GPP is authorizing take that is inconsistent with our preservation standard, we will suspend the GPP temporarily or indefinitely. This suspension may apply over all or part of the program area. Suspension could also occur if the Service finds that bald- or golden-eagle populations are trending in a direction that would be inconsistent with our preservation standard. Should the Service suspend the GPP in whole or in part, permits issued under the GPP would remain valid until their expiration; however, no new permits could be issued under the GPP in the geographic area where it is suspended. This threshold for potential suspension of a GPP mitigates the potential that implementation of a GPP will have a significant impact on eagle populations.

All Action Alternatives would also include an option to continue issuing specific-permit authorizations in certain circumstances. "Specific permits" is a new name used to differentiate this type of permit from "general permits" and represents the existing system (with a few amendments) the Service has used to review and issue eagle take permits since promulgation of the incidental take permit regulations in 2009. Under all Action Alternatives, we would only issue specific permits to projects that do not qualify for, or do not wish to accept the conditions of, general permits.

The Service is also changing several substantive and procedural aspects of the existing regulations, which are common to all the Action Alternatives. Specifically, we are:

1. Introducing a three-tier, specific permit application structure for wind energy projects, with each tier characterized by different application fees and processing times

commensurate with the Service resources needed to process the application. These tiers are designed to encourage applicants to make decisions that reduce the need for lengthy analysis and negotiation during application review. Lengthy analysis and negotiation slow down permit issuance and are typically caused by the submission of data or methods that do not meet the Service's standards, or applicants not agreeing to the Service's analysis or permit terms during application review.

2. Removing the requirement for third-party monitoring under long-term specific permits. This requirement has limited participation in eagle-take permitting for several reasons and we determined there are adequate safeguards to motivate accurate reporting of eagle fatalities under permits without requiring monitoring by third parties.
3. Removing the requirement for mandatory administrative check-ins every five years. Permit terms will instead remain constant unless the permittee requests an amendment or the Service determines that an amendment is necessary and required. This change would replace scheduled check-ins and potential amendment of permit conditions with unscheduled check-ins and amendments that the permittee or the Service could initiate when warranted.
4. Removing the 10% unauthorized-mortality LAP threshold that was introduced with the 2016 rulemaking. We have since concluded that georeferenced data on unauthorized eagle mortalities are sparse and biased. This has made meaningful evaluation of unauthorized take at the LAP scale difficult or impossible.
5. Amending the existing nest removal regulation to:
 - a. Clarify that temporary or permanent obstruction of a nest that causes temporary or permanent nest abandonment constitutes nest take and requires a nest-take permit.
 - b. Add an additional justification for nest removal to protect species that are federally protected under the Endangered Species Act (see List of Threatened and Endangered Species (50 CFR 17.11)).
 - c. Expand authorization of nest take for an in-use nest prior to egg laying to include additional situations, including where the safety of humans or species that are federally protected under the Endangered Species Act are at risk.
6. Applying the concept of baseline to golden eagles across the entire country, rather than only west of the 100th meridian. In the 2016 PEIS, the Service conservatively assumed that all authorized take of golden eagles east of the 100th meridian should require compensatory mitigation regardless of whether the authorized take was occurring prior to September 11, 2009 and was considered part of baseline. However, recent information on the population status of golden eagles in the eastern U.S. demonstrates that this conservative restriction is not necessary to ensure that take of golden eagles there is compatible with the preservation standard.
7. Updating the number of bald eagles that will be debited from EMU take limits and LAP thresholds when authorizing nest disturbance based on new information. Presently, the Service assumes a loss of productivity equivalent to 1.33 bald eagles per year for each authorized nest disturbance in the U.S., except in the southwest, where we assume a loss of 0.95 bald eagles per year. Based on recent Service analysis of new information, we would update the nationwide debit from 1.33 to a value of 0.26 bald eagles per year. Because of low sample sizes in our analysis, we have insufficient new data to warrant updating the debit in the southwest, which would remain at 0.95 bald eagles per year.

We determined that none of these changes would result in any significant impacts on the human environment (*see* EA Section 5.3).

DESCRIPTION OF THE PREFERRED ALTERNATIVE

Under our Preferred Alternative, the Service would create four GPPs for the activities listed below, each with specific eligibility requirements:

1. **Land-based wind energy facilities:** eligibility for general permits based on both relative abundance of eagles where turbines exist or are proposed and the distance between existing or proposed turbines and known eagle nest locations. Once a permittee has qualified for a general permit, the permitted project remains eligible for future general permits even if the Service revises eagle relative abundance thresholds or if eagles construct a nest within the species-specific setback distances. To remain eligible, the permittee must be in compliance with all other general permit requirements.
2. **Power-line entities:** all power-line entities are eligible for general permits provided they are willing to accept and implement the standard conditions and certifications required by the Service. Standard conditions include the creation of four strategies (*see* EA Section 3.3.5.3): collision response strategy, proactive retrofit strategy, reactive retrofit strategy, and shooting response strategy.
3. **Activities likely to cause nest disturbance:** eligibility for general permits is limited only to disturbance of bald eagles. The following activity types are eligible for general permits provided that applicants are willing to accept and implement the activity-specific conditions and certifications required by the Service. These general permits are not available for nest structures located in Indian country, as defined in 18 U.S.C. 1151. This restriction does not apply when the Tribal government is the applicant for the permit on their own land.
 - a. Building construction and maintenance within 660 feet of a bald eagle nest;
 - b. Linear infrastructure construction and maintenance (*e.g.*, roads, rails, trails, power lines, and other utilities) within 660 feet of a bald eagle nest;
 - c. Alteration of shorelines and water bodies (*e.g.*, shorelines, wetlands, docks, moorings, marinas, and water impoundments) within 660 feet of a bald eagle nest;
 - d. Alteration of vegetation (*e.g.*, mowing, timber operations, and forestry practices) within 660 feet of a bald eagle nest;
 - e. Motorized recreation (*e.g.*, snowmobiles, motorized watercraft, etc.) within 330 feet of an in-use, bald eagle nest;
 - f. Non-motorized recreation (*e.g.*, hiking, camping, fishing, hunting, canoeing, etc.) within 330 feet of an in-use, bald eagle nest;
 - g. Aircraft operation (*e.g.*, helicopters, fixed-wing aircraft) within 1,000 feet of an in-use, bald eagle nest;
 - h. Prescribed burn operations within 660 feet of a bald eagle nest; or
 - i. Loud, intermittent noises (*e.g.*, blasting) within one-half mile of an in-use, bald eagle nest, where the noise is intermittent or otherwise not present when the nest is initiated. Noise that is present prior to nest initiation and sufficiently consistent that eagles demonstrate tolerance to the activity does not require a permit.
4. **Nest removal activities:** eligibility for general permits is limited only to removal of bald eagle nests and only under the regulatory justifications, below (justifications 1 through 3

listed in EA Section 3.4.2.5). These general permits are not available for nest structures located in Indian country, as defined in 18 U.S.C. 1151. This restriction does not apply when the Tribal government is the applicant for the permit on their own land.

- a. Nest take for emergency;
- b. Nest take for health and safety;
- c. Nest take on human-engineered structures.

Compensatory mitigation would only be required for general permits issued under the GPP for land-based wind, since the Service estimates that permits issued under the other three GPPs will be or can be made consistent with our preservation standard by the permittee agreeing to standardized general permit terms. We will require monitoring for impacts under each general permit and reporting of those impacts to the Service when observed.

The Service would retain the ability to issue specific permits under our Preferred Alternative. Any project or activity would be eligible for a specific permit; however, we would only expect to issue specific permits to projects that do not qualify for, or do not wish to accept the conditions of, general permits. Specific permits will require compensatory mitigation when the Service determines, upon project-specific analysis, that authorized take is likely to be inconsistent with our preservation standard. Since EMU take limits for golden eagles are set at zero across the country, compensatory mitigation will often be required for specific permits that authorizes take of golden eagles, except when the take is determined to be a part of the Service's baseline (see EA Section 1.4). Similar to general permits, monitoring of project impacts and reporting of those impacts will be required under each permit. Required monitoring under specific permits will be at least as rigorous as required monitoring under general permits.

EFFECTS AND FINDINGS RELATED TO IMPACTS ON EAGLES AND OTHER PROTECTED WILDLIFE

Eagle incidental take permits issued by the Service are not a prerequisite to construction and operation of a project or activity but are required to ensure legal compliance with the Eagle Act if eagle take occurs. The scope of our authority under the Eagle Act (and the scope of the EA) is to ensure that authorization of eagle take by a project or activity is compatible with the preservation of eagles as required by the statute. Relevant impacts to the environment from this proposed action are limited to those resulting from implementation of permit-eligibility requirements and permit conditions. Consequently, this rulemaking, regardless of the alternative selected, is not anticipated to affect the number of wind energy facilities, power line projects, or other projects or activities that will be proposed, constructed, and operated on the landscape. Indeed, after over a decade of experience issuing eagle incidental take permits, the Service has infrequently, if ever, observed that project or activity proponents decide not to construct projects or undertake activities because they did not possess an eagle take permit. In our experience, particularly in the case of wind energy facilities, project proponents often elect to construct their projects first, and then apply for a permit (if they apply at all). Based on our experience with the permitting program to this point, we expect that the more projects or activities that participate in the eagle take permit program, the greater the benefit that is likely to be observed for eagles and, by extension, for migratory birds that may also benefit from eagle conservation measures required under permit conditions. Therefore, although it may seem to the general public that

increasing permit participation, and thus authorizing greater amounts of eagle take, would have negative impacts on eagles, we predict the opposite effect will occur.

This rulemaking, and resulting increases in participation of eagle take permitting, will likely result in greater benefits to eagles. Additionally, GPPs under all Action Alternatives are designed to motivate owners and operators of wind energy facilities to site turbines in areas that the Service has pre-determined are lower risk to eagles. This feature of each Action Alternative further reduces any potential adverse impacts to eagles from any Action Alternative.

However, adverse effects to eagle populations may occur if the Service has not adequately required compensatory mitigation under general permits (i.e., if take across all general permits is greater than expected and mitigated for). We mitigate the risk of this result by ensuring eligibility criteria for each GPP limit general-permit availability to activities and projects that we have pre-determined will have relatively consistent and low risks to eagles or risks that implementation of required well-established avoidance, minimization, and compensatory mitigation measures will reduce. We designed these threshold criteria to ensure that projects receiving general permits are not likely to negatively impact eagles to a significant degree.

Two additional measures included in all the Action Alternatives further reduce general-permit availability to potentially high-risk wind energy facilities and, thus, limit the possibility of under-mitigating take that occurs under general permits:

1. Wind energy facilities covered by general permits would be required to design and implement measures to reduce eagle take if they find three dead or injured bald eagles or three dead or injured golden eagles at permitted infrastructure, and
2. Wind energy facilities that find four dead or injured bald eagles or four dead or injured golden eagles would be ineligible to receive another general permit upon expiration of their current permit. These facilities would have to apply for a specific permit, requiring a project-specific risk analysis.

These requirements would reduce the likelihood that wind-energy facilities with unexpectedly high impacts on eagles are eligible to qualify for or continue under a general permit, thereby reducing the risk that the GPP for wind facilities under any Action Alternative would authorize take that is inconsistent with our preservation standard.

One drawback to these measures is that they may disincentivize reporting of eagle remains at wind energy facilities by general permittees, particularly the third and fourth eagles found. However, the Service has introduced measures under all Action Alternatives to streamline issuance of specific permits (described above). Additionally, the new GPPs will allow Service staff to focus more time and resources on specific-permit-application review, resulting in shorter application review times for specific permits. We anticipate that these things will reduce the disincentive for reporting, by reducing the presumption that specific permits are difficult to obtain, and that general permittees will not ignore the presence of or elect not to report eagle remains to avoid having to apply for a specific permit. Additionally, the potential criminal legal consequences of knowingly reporting untrue or incorrect information should counter any disincentive to required reporting.

Adverse effects to migratory birds could occur if the Service prescribes permit conditions that directly or indirectly impact migratory birds. Because the Service will select A&M measures that minimize detrimental effects on eagles, we expect that A&M measures for GPPs will have a neutral or slightly positive impact on migratory birds overall. This is because the positive impacts of these measures on migratory birds will likely outweigh any potential negative impacts, particularly for raptors with similar biological characteristics to eagles. Additionally, because compensatory mitigation requirements will be designed to save eagles, we expect that compensatory mitigation for eagle take under the Action Alternatives would result in a moderate reduction of migratory bird take and potentially a larger reduction for some species, such as raptors, vultures, and corvids.

Issuance of general permits would not result in effects to species listed as threatened or endangered, or proposed to be listed as threatened or endangered, under the Endangered Species Act (hereafter listed species) or the critical habitat of such species. All Action Alternatives would specify that general permits may not be used to authorize incidental take of eagles by an activity if implementing the conditions required by the general permit may affect a listed species or critical habitat of such species. In those cases, the applicant must apply for a specific permit. In addition, Service-approved in-lieu fee (ILF) programs will carry out mitigation required under general permits, and some specific permits. We will require, by agreement, that these ILF programs avoid conducting activities that are likely to directly or indirectly affect listed species or critical habitat of such species.

The four alternatives considered in the EA provide a reasonable range of alternatives to meet the purpose and need of this rulemaking. Alternative 1, the No Action Alternative, is not likely to improve participation in the eagle-take permitting program and thus, is not likely to provide any new conservation benefit to eagles or migratory birds or provide a more efficient permitting system for the Service or the regulated community. Because it maintains the status quo, Alternative 1 would not have any new impact on the environment.

We expect Alternative 2 to increase participation in the eagle-take permit program compared to Alternative 1. Thus, implementation of Alternative 2 would create corresponding benefits to affected resources. However, we expect participation and the corresponding benefits to eagles and migratory birds to be greater under Alternatives 3 and 4 because these Alternatives have compensatory mitigation requirements commensurate with project size, which should encourage greater participation. Additionally, Alternative 4 contains a wider breadth of activities that will qualify for general permits, which should further increase participation. Because the Service does not believe that proximity to nests alone is the best way to predict risk to eagles, there are likely to be some wind projects under Alternative 2 that receive general permits but have relatively high risk to eagles. Additionally, data on nest locations is unreliable in many parts of the country, reducing our ability to reliably determine which existing wind projects may be eligible for general permits and which may not be. This adds uncertainty to any assessment the Service might perform of impacts on eagle populations and decreases our ability to ensure this Alternative is consistent with our preservation standard. Therefore, we expect Alternative 2 would come with the highest risk of implementing a GPP that is inconsistent with our preservation standard. This, in turn, increases the likelihood the Service would either be required to suspend or withdraw the GPP or, to continue the program, need to amend mitigation

requirements to ensure consistency with our preservation standard. These actions create more uncertainty to the regulated community than Alternatives 3 and 4.

We expect Alternative 3 to increase permit participation compared to Alternatives 1 and 2, with corresponding benefits to protected resources. However, we expect that participation and the corresponding benefits to eagles and migratory birds would be greater under Alternative 4 because it contains a wider breadth of activities that will qualify for general permits, which should further increase participation. Even though there will be fewer wind projects that will be immediately eligible for a general permit under Alternative 3 compared to Alternative 2 (because of the additional eligibility requirement under Alternative 3), we anticipate a greater percentage of lower-risk projects will ultimately apply for general permits because the compensatory-mitigation fee for wind energy facilities is based on hazardous area and is more equitable than a flat mitigation requirement regardless of project size, as is included in Alternative 2.

Because Alternative 3 bases general permit-eligibility on the estimated relative abundance of eagles, it provides an efficient basis to map and determine which wind energy facilities may be eligible for general permits. Although we cannot predict with 100% certainty which wind energy facilities will be eligible for and will apply for general permits, it provides a better basis for us to anticipate the amount of eagle take we may authorize under the GPP for this Alternative. This improved predictive ability, compared to Alternative 2, translates both to a more accurate assessment of the amount of compensatory mitigation needed to offset take and increased confidence that general permits issued under this Alternative would be consistent with our preservation standard. It also reduces the likelihood we would have to suspend or terminate the GPP for wind-energy facilities either regionally or nationwide. We conclude that implementation of Alternative 3 will not have a significant impact on eagles.

Alternative 4 would provide the greatest benefits to eagles and migratory birds because we expect the highest permit participation under this alternative. This Alternative includes the GPP for wind energy facilities described under Alternative 3, plus three more GPPs for power line entities, activities likely to cause nest disturbance, and nest removal activities. With four different GPPs, Alternative 4 would also create the most program efficiency, allowing Service staff to focus their limited time and resources on projects and activities that are likely to have the highest risk to eagles, thereby achieving the greatest amount of eagle conservation for our efforts. Alternative 4 comes with the same increased confidence as Alternative 3 that implementation of the GPP for wind energy facilities will be consistent with our preservation standard when compared with Alternative 2. Consequently, we conclude that Alternative 4 will have no significant impact on eagle populations.

IMPACTS ON OTHER RESOURCES

We conclude that none of the Action Alternatives would substantially interfere with, or have any significant impact on, cultural practices and ceremonies relating to eagles or affect the ability of Tribes to use eagle feathers or parts consistent with Federal law when compared to the No Action Alternative. Anticipated increases in permit participation would increase fatality monitoring requirements, which would, in turn, increase eagle remains discovered on the landscape; remains that may not have been discovered or reported if those projects had not participated in the permit

program. These remains would, in most cases, be sent to the National Eagle Repository (NER). Thus, we predict that implementation of all Action Alternatives would result in a greater number of eagles and eagle parts being distributed to the NER and ultimately to federally recognized tribes for religious use when compared to Alternative 1. However, some Tribes, Tribal members, or other Americans may experience adverse effects if they perceive the concept of authorizing eagle take as offensive and inconsistent with values they hold related to religious or cultural beliefs, patriotism, or conservation. These effects would be greater under the Action Alternatives as compared to Alternative 1 because of the expected increase in permit applications and issued permits. However, as described previously, authorizing more eagle take via permits would not increase the amount of eagle take occurring on the landscape. Instead, greater participation in eagle take permitting would lead to decreased eagle fatalities over time and increased benefits to eagles from the conditions required under permits that avoid and reduce take and require compensatory mitigation. Thus, we conclude that the Action Alternatives would not have a significant impact on cultural practices.

The Service does not anticipate adverse effects on historic properties under any of the Action Alternatives. Issuance of an eagle permit is not a prerequisite for the construction of a project or other ground-disturbing activities that may affect historic properties but could be considered an undertaking under the National Historic Preservation Act. Under all Action Alternatives, the Service would ensure that any final requirements included in specific permits either will not cause ground disturbance or that permittees have obtained, and are in compliance with, a written agreement with the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to historic properties. When issuing general permits, the Service will ensure that the general permit applicant has certified that their activity either does not affect a property that is listed, or is eligible for listing, in the National Register of Historic Places as maintained by the Secretary of the Interior; or has obtained, and is in compliance with, a written agreement with the relevant SHPO or THPO that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to historic properties. The Service will also require that ILF programs implementing compensatory mitigation activities avoid impacts to historic properties.

The Service expects minor socioeconomic impacts under all Action Alternatives that we do not consider significant. All Action Alternatives are expected to result in net socioeconomic benefits to permittees. Although the benefits to each individual permittee will vary and are dependent on the costs of the respective permit and the costs to implement required A&M measures, the Service expects many permittees to see significant cost savings under all Action Alternatives as compared to the No Action Alternative. In addition, we expect that all Action Alternatives will result in reduced legal enforcement costs, because the creation of the GPPs is likely to result in new entities applying for permits that would not have otherwise applied under the No Action Alternative. These savings and reduction in the regulated community's legal risk are expected to be greatest under Alternative 4 because of the cost savings available and increased participation when compared with the rest of the Action Alternatives. All Action Alternatives are also likely to

provide societal benefits from improved eagle conservation, including increases in ecotourism from increased recreational opportunities (e.g., birding) and aesthetics, increases in spiritual enrichment opportunities, and other benefits (*see* EA section 4.7.2). Alternative 4 is expected to provide the greatest amount of eagle conservation, and thus, the greatest societal benefits related to eagle conservation.

Finally, all Action Alternatives are expected to provide benefits to the Service. We generally expect these benefits to be more modest than those realized by permittees. However, implementation of any of the Action Alternatives should result in more efficient permit processing and recouping resources that would otherwise have been spent on processing specific permits for projects with relatively low risk to eagles. Because Alternative 4 provides for four GPPs, it is expected to provide the Service with the greatest efficiencies and the most benefit. For all these reasons, we do not predict that implementation of any of the Action Alternatives will have a significant socioeconomic impact.

PUBLIC SCOPING AND TRIBAL CONSULTATION

Many federally recognized Tribes have interests that could be affected by this rulemaking. Our regional Tribal liaisons sent notifications to all federally recognized Tribes in their regions in September 2021 informing them of the Advance Notice of Proposed Rulemaking (ANPR) for this rulemaking, offering government-to-government consultation if requested, and encouraging Tribes to review and comment on our proposal.

On September 14, 2021, the Service published an ANPR to inform the public of changes the Service was considering for expediting and simplifying the permit process authorizing incidental take of eagles. This ANPR also served as the Notice of Intent (NOI) for the Service to prepare a draft environmental review document pursuant to NEPA. The Service used this NOI to notify federal and State agencies, Tribes, and the public of our intentions to evaluate the potential environmental impacts of the proposed action. In the ANPR and NOI, we invited input from other federal agencies, Tribes, State agencies, and nongovernmental organizations for any pertinent issues we should address, including alternatives to our proposed approach for authorizing eagle incidental take. The public comment period for both documents was open until October 29, 2021.

On October 14 and 21, 2021, the Service held webinars that were restricted in attendance only to member of federally recognized Tribes to inform Tribes of the proposed action and solicit input and feedback. We invited Tribal representatives to ask questions and seek clarifications on our proposal. In addition, we sent letters through our regional offices inviting Tribes to engage in this proposed action via the government-to-government consultation process. During the comment period on the ANPR, we received comments from seven Tribes or Tribal groups. These letters were reviewed, and comments incorporated into the proposed rule and the published draft EA as appropriate.

On October 19, 2022, and November 2, 2022, the Service offered webinars to federally recognized Tribes to present information and respond to questions on the proposed rule and draft EA. During the public comment period, Tribes submitted 11 letters containing 141 unique

comments. We considered Tribal comments and incorporated them into the final rule and this EA as appropriate. Public comments are available at <http://www.regulations.gov> under Docket No. FWS-HQ-MB-2020-0023.

On December 12, 2023, the Service held a webinar that was restricted in attendance only to member of federally recognized Tribes to inform Tribes of our impending final action and to solicit last minute input and feedback. We invited Tribal representatives to ask questions and seek clarifications on our proposal.

During the public comment period, we received 1,899 distinct comments on the ANPR and NOI. Many comments included additional attachments (e.g., scanned letters and supporting documents). These comments represented the views of multiple Federal and State agencies, private industries, non-governmental organizations (NGOs), and private citizens. In addition to the individual comments received, multiple organizations submitted attachments representing individuals' comments, form letters, and signatories to petition-like letters representing almost 1,804 signers.

We published the proposed rule and associated draft EA in the Federal Register on September 30, 2022, opening a 60-day public comment period until November 29, 2022. We extended this public comment period to December 29, 2022, at the request of commenters. During the public comment period, we received 1,644 distinct comments from a diverse group of entities and individuals. We received 743 comments from industry groups, 141 comments from Tribes, 84 comments from state governments, and 676 comments from other entities, including NGOs and individuals. We considered these comments and incorporated them into the final rule and EA as appropriate. Public comments are available to the general public at <http://www.regulations.gov> under Docket No. FWS-HQ-MB-2020-0023.

DETERMINATION

The Service has selected Alternative 4 as our preferred alternative. We considered impacts to eagles at the EMU- and LAP- scales in the EA, incorporating the PEIS by reference. When considering these impacts, we made conservative assumptions and used fatality estimates to reduce the likelihood of inconsistency with our eagle preservation standard. We have also considered impacts to other natural resources, cultural and religious practices, and resources protected under NHPA. We further considered socioeconomic impacts to the regulated community, to the Service, and to the public. In short, we concluded that Alternative 4 would have the least impact on the human environment but that none of the Action Alternatives would have a significant impact.

The Service has determined that the finalization of a regulation as described under any of the Action Alternatives, would not constitute a major Federal action that will significantly affect the quality of the human environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Therefore, preparation of an EIS is not required.

PUBLIC NOTICE

An electronic copy of this FONSI has been posted on the Service's website at <https://www.fws.gov/regulations/eagle>.

Martha Williams – Director, U.S. Fish and Wildlife Service