Federal Register announcing updates. Finally, NHTSA will post a video of the hearing at *http://www.nhtsa.gov/cafe* and will make a transcript of the hearing available in the rulemaking docket as soon as practicable.

How can I get copies of the proposed action, the Draft Supplemental Environmental Impact Statement, and other related information?

NHTSA has established a docket for the proposal under Docket ID No. NHTSA–2021–0053 and a separate docket for the Draft SEIS at Docket ID No. NHTSA–2021–0054. Relevant documents and information can also be accessed at NHTSA's CAFE website, at *https://www.nhtsa.gov/cafe.* Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal and the Draft SEIS.

Issued on September 9, 2021, in Washington, DC, under authority delegated in 49 CFR 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–19799 Filed 9–10–21; 11:15 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

[Docket No. FWS–HQ–MB–2020–0023; FF09M2200–212–FXMB12320900000]

RIN 1018–BE70

Eagle Permits; Incidental Take

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service, or we) seeks public and regulated-community input on potential approaches for further expediting and simplifying the permit process authorizing incidental take of eagles. This document also advises the public that the Service may, as a result of public input, prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. We are furnishing this advance notice of proposed rulemaking to advise other agencies and the public of our intentions and obtain suggestions and information on the scope of issues to include in the environmental review. Public and regulated community responses will be used to improve and make more efficient the permitting process for incidental take of eagles in a manner that is compatible with the preservation of bald and golden eagles.

DATES: You may submit comments on or before October 29, 2021. We will consider all comments on this advance notice of proposed rulemaking, including the scope of the draft environmental review, that are received or postmarked by that date. Comments received or postmarked after that date will be considered to the extent practicable.

ADDRESSES: You may submit written comments by one of the following methods:

Electronically: Go to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Search for FWS–HQ–MB–2020–0023, which is the docket number for this document, and follow the directions for submitting comments.

By hard copy: Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–MB–2020–0023, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments by only one of the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Availability of Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director, Migratory Birds, at 202–208–1050. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking seeks comment on several approaches that could potentially underpin a more streamlined eagle incidental-take-permitting framework that we first established in 2009. Specifically, the Service is interested in comments clarifying specific aspects of the current permitting process that hinder permit application, processing, or implementation. The Service is also seeking recommendations for additional guidance the Service could develop that would reduce the time and/or cost associated with applying for and implementing long-term, eagle incidental take permits under existing regulations. The Service further invites recommendations for targeted revisions that could be made to existing regulations consistent with the overall permitting framework that would reduce the time and/or cost associated with applying for and processing long-term permits for incidental take of eagles. Finally, the Service is interested in comments regarding potential new regulatory approaches to authorizing incidental take under the Eagle Act, particularly for projects that can be shown in advance to have minimal impacts on eagles, that would reduce the time and/or cost associated with applying for and operating under long-term permits for the incidental take of eagles.

I. Background

The Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668d) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. Service regulations in title 50 of the Code of Federal Regulations, consistent with the Eagle Act (16 U.S.C. 668c), define ''take'' as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb (50 CFR 22.3). The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the taking of eagles for various purposes, provided the taking is compatible with the preservation of the bald eagle or the golden eagle. Regulations at 50 CFR 22.3 define ''compatible with the preservation of the bald eagle or the golden eagle'' as ''consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units [EMUs] and the persistence of local populations throughout the geographic range of each species.'' Permits for the incidental, or unintentional, take of eagles were established in 2009 (74 FR 46877, Sep. 11) to authorize incidental take of bald and golden eagles that results from a broad spectrum of activities, such as utility infrastructure, energy development, construction, operation of airports, and resource recovery (50 CFR 22.26).

In 2016, the Service published a final rule (81 FR 91494, Dec. 16, 2016) revising the regulations to lengthen the maximum permit tenure from 5 years to 30 years and require a review of permit implementation periodically throughout the lifetime of the permit at intervals no longer than 5 years. For most projects, the Service assumes the actual take at a project will be less than the level of take initially authorized under a permit, which will result in a reduction in required offsetting mitigation measures over time. This is because initial estimates of eagle fatalities are purposely conservative to reduce the likelihood of a permittee exceeding their authorized level of take, and to ensure

the Service does not exceed the EMU take limits. The 2016 regulations also require specific methods for preconstruction eagle surveys and fatality modeling for wind-energy facilities, the industry with the largest demand for long-term, incidental take eagle permits.

The 2016 regulations provide uniform standards for offsetting take of eagles when authorized take would exceed the sustainable take rate determined by the Service. To preserve bald and golden eagles, the Service surveys eagle populations, estimates population levels, and estimates the level of take, or mortality, each population can withstand without significantly declining. When the sustainable take rate is predicted to be exceeded by a permitted project, the regulations require the permittee to offset excess authorized take by reducing another form of mortality to eagles or increasing the carrying capacity of the population. The standards apply whether the offsetting mitigation is achieved via direct implementation by the permittee, an in-lieu fee program, or a mitigation bank. The Service has approved two privately developed in-lieu fee programs and is working with other entities to make additional third-party mitigation programs available to simplify the permit process for permittees.

In conjunction with revising the permit regulations in 2016, the Service prepared a comprehensive programmatic environmental impact statement (PEIS) that analyzed the Service's overall permitting program for eagles. The PEIS established the sustainable take limits described above for both species of eagle and evaluated the effects of programmatically issuing permits within those take limits under the conditions included in the regulations. The Service determined that bald eagles could sustain additional mortality and established a nationwide sustainable take limit of 7,500 individuals per year. In contrast, given the status of the North American golden eagle population, the Service concluded that no additional mortality could be authorized without risking population declines. Therefore, additional take would not be consistent with the eagle preservation standard required by the Eagle Act. To remedy this issue, all new take of golden eagles authorized under permit must be offset by conservation measures that will reduce another form of ongoing mortality or enhance population numbers to a commensurate degree.

Because the PEIS analyzed the cumulative impacts of permitting up to the established sustainable take levels, the Service is able to tier environmental analyses required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) from the PEIS, enabling the Service to significantly accelerate the permitting process for complex, long-term projects, such as wind-energy facilities, while continuing to preserve eagles consistent with the Eagle Act.

At the same time, human development and infrastructure continue to increase in the United States, and bald eagle populations continue to grow throughout their range. The result of these trends is an increasing number of interactions between eagles and industrial infrastructure and a corresponding need for the Service to process more applications for incidental take of eagles. The Service and the regulated community share an interest in introducing further efficiencies into the eagle incidental-take-permitting process to meet this demand, while preserving bald and golden eagles pursuant to the Eagle Act.

II. Action Requested From the Public

We seek comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties. Should the Service promulgate a proposed rule and prepare a draft environmental review pursuant to NEPA, we will take into consideration all comments and any additional information received. The Service will act as the lead Federal agency responsible for completion of any environmental review resulting from this notice. To ensure that any proposed rulemaking effectively evaluates all potential issues and impacts, this document seeks the public's and regulated community's input on what changes could be made to the Service's eagle incidental-take-permitting program (50 CFR 22.26) to make the permitting process more efficient and effective. Any input should be consistent with statutory provisions of the Eagle Act and compatible with the preservation of eagles. The Service recommends that anyone planning to provide input first review the Service's 2016 rulemaking (81 FR 91494, Dec. 16, 2016) and the PEIS discussed above; both documents are available on *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2020–0023 (*https://www.regulations.gov/docket/FWS-HQ-MB-2020-0023/document*).

The Service is interested in the public's and regulated community's responses to the following questions:

1. Are there specific protocols, processes, requirements, or other aspects of the current permitting process for incidental take of eagles that hinder permit application, processing, or implementation?

As an example, the Service has heard from some companies that the requirement that monitoring under long-term permits be carried out by independent third parties is not feasible or is prohibitively expensive. Additional details on these costs, including circumstances that increase third-party-monitoring costs, would be helpful.

2. What additional guidance, protocols, analyses, tools, or other efficiencies could the Service develop that would reduce the time and/or cost associated with applying for, implementing, and conducting monitoring associated with long-term permits for incidental take of eagles under existing regulations? What are the estimated costs of the suggested additional efficiencies, and how do those costs compare to industry's current practices?

The Service is currently working on guidance for fatality monitoring at wind-energy facilities, standards for using power-pole retrofits as offsetting mitigation, revised protocols for minimizing disturbance of nesting bald eagles, golden eagle nest-buffer guidance, and reduced or more-streamlined permitting requirements in areas where the risk of take is low. We seek input on any additional tools and guidance the Service could develop to improve the permitting process.

One concept the Service is considering that will potentially reduce required monitoring costs under the existing regulations is ''pooled'' post-construction monitoring of a selected subset of permitted projects. The Service could explore creation of an opportunity for permitted facilities to contribute funding the Service would use to direct post-construction monitoring across participating projects. Such a program would work by implementing monitoring in a systematic, stratified fashion across participating projects, eliminating the need for each project to implement a stand-alone third-party monitoring program yet still satisfying the permittee's post-construction monitoring requirements. We are seeking feedback on the concept of pooled monitoring; in particular:

- Would prospective eagle incidental take permittees take advantage of this opportunity?
- If so, how important are the tradeoffs between the cost of pooled

monitoring and obtaining project-specific fatality estimates?

- Is monitoring at a randomly selected subset of projects an acceptable alternative to monitoring at every project from the standpoint of ensuring the permit program is reasonably protective of bald and golden eagle populations?

3. What targeted revisions could be made to existing regulations consistent with the overall permitting framework and PEIS that would reduce the time and/or cost associated with applying for and processing long-term permits for incidental take of eagles?

4. Are there potential new regulatory approaches to authorizing incidental take under the Eagle Act, particularly for projects that can be shown in advance to have minimal impacts on eagles, that would reduce the time and/or cost associated with applying for and operating under long-term permits for incidental take of eagles?

For example, we have received proposals for a new, regulatory approach to further streamline the permitting process for incidental take of eagles by establishing a ''nationwide'' or ''general'' permit program similar to the U.S. Army Corps of Engineers (USACE) Nationwide Permit Program (NWP program) for authorizing impacts to wetlands and other waters of the United States. Those permits can provide expedited or even eliminate review of proposed activities that have only minimal individual and cumulative adverse environmental effects.

The USACE system for analyzing the environmental effects of its NWP program is much more complex and resource-intensive than the Service's current eagle permitting framework under the 2016 PEIS. The USACE uses a three-tiered approach in administering its NWP program, and ensuring that activities authorized by NWPs have no more than minimal individual and cumulative adverse environmental effects. For applicants under the majority of NWPs that require preconstruction notification, the data requirements entailed in completing the preconstruction notification are not insubstantial. Applicants must provide detailed information regarding proposed activities, their potential impacts, avoidance and minimization measures, and compensatory-mitigation commitments. Considering the complexity of the USACE program, we seek further input as to which aspects of the NWP program industry and the public are most interested in the Service emulating in our eagle-permitting program, as well as those aspects not recommended.

A fundamental principle of the USACE nationwide permit program is that it is available only to activities that will have minimal impacts both individually and cumulatively. The concept of a general permit for incidental take of eagles could, in theory, similarly apply only to situations with minimal potential adverse effects on eagle populations, individually and cumulatively. Unlike wetland acreage lost under a USACE nationwide permit which can be monitored once to assess loss, obtaining a reasonably accurate estimate of eagle incidental take requires systematic monitoring of project impacts through-time. A challenge for adopting the general permit concept for eagle incidental take permits is the uncertainty over the actual effects of such permits, individually and cumulatively, on eagle populations.

To reduce this level of uncertainty, the Service has required permitted facilities to implement monitoring protocols at a level sufficient to generate a reasonably reliable estimate of the actual take caused by the facility. To reduce the cost to industry as well as manage impacts to eagles (prior to accounting for offsetting mitigation measures), the Service could limit general permits to geographic areas with relatively lower numbers of eagles and require a reduced monitoring effort. Monitoring could be designed purely to detect whether eagle take is below a certain level, rather than to arrive at a reasonable estimate of the actual take level. We estimate the average monitoring burden to achieve this standard would be reduced by 50 percent from current requirements. The Service has developed maps of relative abundance of both species of eagle across the coterminous United States using a variety of datasets (see Ruiz-Gutierrez et al., 2021 and *https://www.fws.gov/migratorybirds/pdf/management/Lowriskwebex.ppsx*), These maps could serve as the basis for where general permits would be available. Comparing data from the U.S. Geological Survey wind-turbine database (Hoen et al. 2018), it appears that approximately 40 percent of existing wind-energy facilities would fall into areas the Service would consider low risk based on relative numbers of both species of eagles. We encourage feedback on the concept of a general permit that would be available in areas of relatively low eagle abundance and that would still include systematic monitoring, but at a reduced level, and whether companies would seek to obtain such permits. We also seek feedback on how a general permit would impact small businesses and whether it would result in cost savings compared to the current permit process. An alternative option would be to restrict general permits to projects seeking authorization only for take of bald eagles and not golden eagles. Available data indicate that bald-eagle populations are continuing to expand throughout their range. Therefore, a permitting scheme with some decrease in the level of certainty as to actual effects on bald eagles might be justified to reduce the burden on the regulated community. A significant complicating factor to consider, however, is the likelihood that a project authorized under a general permit to take bald eagles may also incidentally take golden eagles.

Another concept for a streamlined general permit would be to eliminate systematic monitoring. Tracking eagle take would consist of permittees reporting all mortalities discovered opportunistically during normal operations and maintenance activities, but there would be no systematic fatality monitoring under a scientifically rigorous protocol. As described above, the take levels on these permits would need to be substantially higher than the level of take reported to account for the uncertainty regarding the actual take level of the permitted activity. We estimate that the probability of finding a dead eagle, if one has been killed, given the level of opportunistic monitoring at a typical wind energy facility, is approximately 10 to 15 percent. Even at the higher end of this range, with a 15 percent probability of detecting a dead eagle, the opportunistic finding of one eagle over any time period would result in a fatality estimate of approximately 10 eagles, with an 80 percent uncertainty range (credible interval) of from 1 to 15 dead eagles. Cumulatively, over many such permitted facilities, the uncertainty regarding actual take would be compounded. For example, if the Service permitted 10 such separate facilities, each with one eagle fatality found over the first 5 years, we could only be relatively certain that actual fatalities at those projects combined did not exceed 150 eagles over the 5-year period.

This approach would introduce uncertainties into take estimates, requiring higher levels of authorized take, which would in turn necessitate more offsetting mitigation and affect overall take limits at the local area and EMU scales. Currently, the U.S. Fish and Wildlife Service has only approved retrofitting of power lines to avoid electrocution as a compensatory mitigation measure in permits that have been issued, and this form of mitigation can cost greater than $30,000 per individual eagle replaced (Hosterman and Lane 2017).

We welcome feedback on the topics described above and how some of the issues raised might be resolved. In addition, we would appreciate hearing from the public about other alternative proposals for how the Service could develop and administer a general permit program for incidental take of eagles that will, with reasonable certainty, protect eagles consistent with the Eagle Act.

It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian Tribes and Tribal members, and to consult with Tribes on a government-to-government basis whenever plans or actions affect Tribal trust resources, trust assets, or tribal health and safety. This policy draws from the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 4. These documents confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Services to consult with Tribes on a government-to-government basis. Relative to our considerations for improving the permitting process for incidental take of eagles, we request comments that clarify appropriate consideration of Tribal sovereignty, including any agreements in which Tribes may choose to participate in consultation.

5. We are seeking data to estimate the current industry costs on pre-application/pre-construction surveys for eagles, monitoring requirements of the permit itself, including paying for required third party monitors, and compensatory mitigation. We are seeking data on how costs will change if additional efficiencies are implemented. We are also requesting the submission of data regarding the number and type of small businesses affected, the scale and nature of economic effects in the current permitting process, and how costs would change for small businesses if additional efficiencies are implemented.

Literature Cited

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Hosterman, H., Lane, D., 2017. Proxies for the market value of bald and golden eagles: Final report (Contract Report to U.S. Fish and Wildlife Service No. F14PA000019). Abt Associates, Portland, OR.

Ruiz-Gutierrez, V., E.R. Bjerre, M.C. Otto, G. S. Zimmerman, B.A. Millsap, D. Fink, E.F. Stuber, M. Strimas-Mackey, and O.J. Robinson. 2021. A pathway for citizen science data to inform policy: A case study using EBIRD data for defining low-risk collision areas for wind energy development. Journal of Applied Ecology 58:1104–1111.

Public Availability of Comments

Written comments the Service receives become part of the public record associated with this action. Comments and materials we receive, as well as supporting documentation we used in preparing this document, will be available for public inspection on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Signing Authority

The Assistant Secretary for Fish and Wildlife and Parks approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of the Interior. Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this document on September 1, 2021, for publication.

Maureen D. Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

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