



Shaping the future for birds

February 19, 2013

David J. Hayes
Deputy Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Subject: Bald and Golden Eagle Decision Making

Dear Mr. Hayes:

ABC respectfully requests the U.S. Fish and Wildlife Service (FWS) and Department of the Interior (DOI) defer any further consideration as to whether to change the maximum duration of Bald and Golden eagle take permits to 30 years from the current five until a new Secretary of the Interior has been confirmed and has the opportunity to fully participate in the decision. FWS's proposal to make 30 year eagle take permits available has been highly controversial, with the [National Park Service](#) and [more than 120](#) conservation, animal welfare, tribal, and local interest groups opposed to it.

As ABC pointed out in our [previously-filed comments](#), there are several reasons to be concerned about the change to a 30 year eagle take permit system:

1. There is much uncertainty about the current U.S. population of Golden Eagles, which is suspected to be declining. The Bald and Golden Eagle Protection Act requires that no take permits be granted that are incompatible with the preservation of eagles.
2. Many factors that affect eagles and eagle populations will significantly vary over a 30-year period, and FWS's ability to predict and plan for those changes is highly limited.
3. A 30-year programmatic permit puts FWS at a disadvantage relative to the current system of periodic renewal of a five-term programmatic permit and may significantly affect eagle preservation.
4. FWS's framework and plans for adaptive management for administering eagle take permits are likely to be inadequate to justify issuing long-term programmatic take permits.
5. FWS's ability to avoid, minimize, or compensate for eagle take, once a facility is sited, is very limited and uncertain.

6. A 30-year permit will significantly decrease opportunities for public involvement in permitting compared to the current five-year permit.
7. If Golden Eagles are listed under the Endangered Species Act during the next 30 years, 30-year permits could interfere with their recovery and be otherwise ill advised.
8. Extending the maximum duration of programmatic take permits to 30 years is inconsistent with past statements and commitments made by FWS when it published the eagle take regulations.
9. The proposed revision to the maximum duration of programmatic permits is not strictly administrative in nature, but rather would significantly alter the process for permit application and review as well as significantly alter the take limit and substantive approach to eagle protection; therefore, the proposed revision does not fall within the NEPA categorical exclusion invoked by FWS.

As a result of all of these factors, this important and highly controversial decision should not be made without the full participation of the new Secretary of the Interior since the incoming Secretary will be responsible ultimately for the decision's implementation.

In addition, ABC notes with concern that U.S. Fish and Wildlife Service (FWS) has been conducting private, closed-to-the-public meetings regarding eagle take permit regulatory and mitigation matters with the wind industry and some conservation groups.¹ These meetings were held in response to a [letter](#) sent to Secretary of the Interior last year, and they raise serious questions for FWS related to the Federal Advisory Committee Act and other federal law. In addition, the subject matter of these meetings potentially affects many other industries and many members of the public, including the timber and rail industries, Indian tribes, and other conservation and scientific organizations. It is unjust to the interests of these other affected parties to hold such important meetings without them.

Furthermore, these meetings constitute *ex parte* communications about two eagle regulation rulemakings currently in progress. In regard to *ex parte* communications, DOI's Departmental Manual advises, "you should avoid them wherever possible," when they occur "fairness to other participants may make reopening the comment period advisable," and "a willingness to accept ex

¹ During the National Wind Coordinating Collaborative's Wind Wildlife Research Meeting IX in Denver last November, the Senior Advisor to the Director of FWS publicly acknowledged that these meetings were taking place.



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parte communications after the close of the comment period could result in significant delays in the rulemaking process.”²

Therefore, ABC requests that FWS immediately cease holding these private meetings and publish full transcripts of the meetings that have already been held.

In summary, we ask that FWS and DOI defer the decision on whether to change the maximum duration of eagle take permits until a new Secretary of the Interior has been confirmed and can fully participate in the decision and that FWS immediately stop holding these closed-to-the-public eagle meetings and publish full transcripts of the meetings that have already been held.

Thank you for your consideration of our requests.

Sincerely yours,

Darin Schroeder
Vice President of Conservation Advocacy

cc:
Secretary Ken Salazar
Sen. Ron Wyden
Sen. Lisa Murkowski

² The meetings are ex parte communications because they have discussed matters related to the eagle regulation rulemakings, have included interested outside parties and agency staff with authority to make decisions or recommendations about rulemaking, and have taken place after the public comment periods closed. The rulemakings are FWS’s proposed rule revision to extend the maximum term for programmatic eagle take permits from five years to 30 years (docket #FWS-R9-MB-2011-0054) and the Advanced Noticed of Proposed Rulemaking to Eagle Permits; Revisions to Regulations Governing Take Necessary To Protect Interests in Particular Localities (docket # FWS-R9-MB-2011-0094). See Chapter 5, Part 318, Administrative Procedure Series, of DOI’s Departmental Manual, available at <http://www.fws.gov/policy/library/rg318dm5.html>.