



*"Promoting Birding and Conservation as Community Educators,  
Volunteers, and Stewards"*

P.O. Box 502 Sequim, WA 98382

July 5, 2016

Public Comments processing, Attn: FWS-R9-MB-2011-0094  
Division of Policy, Performance, and Management Programs  
U.S. Fish and Wildlife Service, MS: BPHC  
5275 Leesburg Pike, Falls Church, VA 22041-3803

**Re: Eagle Management and Permitting (Docket No. FWS-R9-MB-2011-0094)**

*Submitted electronically at: <http://www.regulations.gov>*

To Whom It May Concern:

On behalf of Olympic Peninsula Audubon Society (OPAS), please accept our comments regarding the U.S. Fish and Wildlife Service's (Service) Eagle Management and Permitting under the Bald and Golden Eagle Protection Act (BGEPA), Docket No. FWS-R9-MB-2011-0094, Eagle Rule Revisions PEIS (Document). We appreciate the opportunity to comment on this docket and the important issues it raises concerning Bald and Golden Eagle protection and conservation – and by implication – the impact of wind energy projects on other migratory and resident bird and flying mammal species.

We strongly support the development of clean, renewable sources of energy such as wind and solar power to reduce the impact of climate change, but also believe that it must be done responsibly and with minimal impact to eagles, other soaring resident and migratory birds, as well as bats.

The most important strategy to protect eagles, native bird and bat populations from harm is proper wind energy siting. We urge USFWS to incentivize the siting of development projects and other impacts away from areas where they create the highest hazard to soaring birds and mammals and towards areas with lesser potential for impacts, *before* any such impacts occur. Following initial risk assessment, the prioritization of avoidance – especially moving or abandoning the project or areas of the project with high risk to flying species – should be the first and most important step for the Service to require from those who need permits.

We also encourage the Service to develop an incentivized design program to configure wind energy systems to be built to standards that reduce or eliminate bird losses due to large, high-speed blades that capture and convert wind energy into electric power. There are several non-bladed or protected blade designs being developed; their fabrication and testing can be supported by well-crafted regulatory actions.

**We find that the proposed permitting program fails to legally and scientifically justify an extension of**

## **the permit duration in the rule to thirty years.**

### **1. The Service:**

- a. Has not demonstrated the effectiveness of five-year take permitting to protect bird populations; as a result, a move toward 30-year permit durations is not scientifically supportable at this time.
- b. Must balance the need for science and conservation planning with the demands of special interests as it does with the Endangered Species Act.
- c. Should provide a more conservative, shorter-duration permit than 30-years allowing for incorporation of advances in scientific knowledge, especially regarding population estimates, take thresholds and caps, and evaluation of unforeseen impacts and changes in the population of eagles.
- d. Must offer a broader suite of scientifically defensible effective avoidance, minimization or compensatory mitigation measures to offset the killing and injury of flying species in the permit program.
- e. Provides no scientific, legal or conservation justification for a thirty-year permit, and provides no data or legal analysis to support the claim that the Bald & Golden Eagle Protection Act should benefit applicants instead of eagles.
- f. Must enforce the ESA, BGEPA, and MBTA when it comes to all energy development, whether traditional or alternative. Shut down or relocate wind energy sites that greatly exceed their take limits for federally protected species, especially if mitigation proves ineffective in reducing bird and bat mortality. This means more prosecutions for violation of the laws and predictable consequences for noncompliance.
- g. Must ensure that industry reporting of bird and bat mortality be made mandatory, collected by independent third party experts, and collection data must be made available to the public by request.

### **2. Recommendations before a thirty-year permit can be considered defensible:**

- a. Create conservation plans for Bald and Golden Eagles with regional population assessments and management parameters and objectives.
- b. Allow for robust third-party peer-reviewed science to inform management decisions and to evaluate proposed avoidance, minimization and compensatory mitigation measures.
- c. Provide a documented and scientifically verifiable analysis of the effectiveness of the current 5-year permit program in meeting the preservation standard of the Bald & Golden Eagle Protection Act.

### **3. Inadequate range of Alternatives:**

- a. Provide an Alternative that would maximize BGEPA compliance by significantly increasing enforcement, both before and after projects are constructed in eagle habitat, and by imposing sufficient penalties to deter violations of the Act.

### **4. Failure to provide broad range of scientifically proven or effective compensatory mitigation measures:**

- a. Compensatory mitigation such as “conservation actions” in the Document are vague, unenforceable, and not scientifically proven to actually mitigate or compensate for the loss of an eagle, nesting or breeding territory, foraging habitat or disturbance when it interferes with breeding, all tenets of definition of “take” in BGEPA. No mitigation option should be excluded, even on a cost basis. It is not the role of the Service to exclude any avoidance, minimization or compensatory mitigation measure or technology on the basis of existing technology, logistics or cost. The analysis of the potential costs of killing or harming eagles should be the sole responsibility of the project proponent in deciding whether to pursue a project.
- b. The Service must take the lead in developing appropriate new compensatory mitigation measures. To expand the defensible compensatory mitigation options, targeted research should be funded as part of the compensatory mitigation to provide additional effective compensatory mitigation tools. This research should be solicited through an unbiased process facilitated by the Service and published in a peer-reviewed journal to further scientific knowledge and improve eagle management.

In conclusion, we continue to agree with the Service’s 2009 justification of the five-year rule, which stated: “...the rule limits permit tenure to five years or less because factors may change over a longer period of time such that a take authorized much earlier would later be incompatible with the preservation of the bald or golden eagle. Accordingly, [FWS] believe [s] that five years is long enough period within which a project proponent can identify when the proposed activity will result in take.” (74 Fed. Reg. at 46,856).

Thank you for your consideration of our comments.

Sincerely,

Ken Wiersema  
President  
Olympic Peninsula Audubon Society

Mary Porter-Solberg  
Conservation Co-Chair  
Olympic Peninsula Audubon Society

Bob Phreaner  
Conservation Co-Chair  
Olympic Peninsula Audubon Society

Cc:

Senator Maria Cantwell  
U.S. Senator for Washington State

Gail Gatton  
Executive Director  
Audubon Washington

Cc (continued):

Stan Senner  
Director of Bird Conservation  
Pacific Flyway, National Audubon

Garry George  
Chapter Network Director/Renewable Energy Director  
National Audubon