



ENVIRONMENTAL DEFENSE FUND

finding the ways that work

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Dear Ms. Savage,

Thank you for meeting with us August 21 at your Arlington office to discuss the recently proposed revisions to the Bald and Golden Eagle Protection Act. Environmental Defense Fund views the recovery and de-listing of the Bald Eagle as one of the great successes of the Endangered Species Act. Our organization is deeply invested in the protection and recovery of eagles in North America. We spearheaded the campaign for a U.S. ban on DDT that started the Bald Eagle on the road to recovery and have fostered the development of conservation incentives such as Safe Harbor Agreements that facilitate endangered species recovery on private lands. Our 500,000+ membership has evidenced strong concern for eagle conservation over the years. Thus we have a sincere interest in maintaining a strong and effective Bald and Golden Eagle Protection Act. It is in this spirit that we offer the following comments on currently proposed revisions to the Act.

Permit criteria

We suggest strengthening the criteria for issuance of programmatic disturbance permits to specifically address facility siting criteria, by inserting the following language as a new Section 22.26(d)(3): "Issuance of eagle take permits to industrial entities for programmatic disturbance will be contingent upon the establishment of independently reviewed industry-wide standards; these standards should specifically include facility siting criteria that will be re-evaluated on a minimum 5 year basis."

We strongly suggest including a narrower and more detailed definition of "public health and welfare" for nest removal permits and developing a prioritization scheme for determining which entities would receive nest removal permits as permit numbers approach threshold levels.

We propose the following language be inserted as a second sentence in Section 22.27(c): "As nest removal permit numbers approach threshold levels in any given year, highest priority will be given to projects that are determined to promote the greatest common societal and environmental good, with preference going to those that: 1) eliminate direct mortality risk to eagles, 2) alleviate potentially grave and widespread hazard to life and limb or public infrastructure, 3) restore sensitive ecosystems, ultimately benefitting eagle populations."

We are also aware that special private property cases of perceived urgency may present themselves that are currently not covered under the category of "public health and welfare." A typical example might be an eagle pair that builds its nest on a man-made structure, interfering with general maintenance or operation. We suggest that a specific sub-category of nest removal permits be created to address this type of situation, not to exceed the original threshold. This type of permit would provide a mechanism for legally addressing such a dilemma, with the conservation goal of minimizing detrimental or even lethal harassment/disturbance of eagles, without providing a loophole for developers seeking to cut nest trees or clear habitat for commercial purposes. We suggest the following language be inserted immediately after the first sentence of Section 22.27(a): "A 'Nest on Pre-existing Engineered Structure' removal permit would apply to early stage or inactive nests that present a functional hazard, interfering with a structure's proper operation or rendering it inoperable for its intended purpose."

Monitoring

Effective implementation of the eagle take permit program depends upon maintenance of stable or increasing eagle populations. To adequately evaluate population status and limiting factors at five year intervals requires establishment of a rigorous continent-wide monitoring program for both eagle species. We therefore make the following suggestions:

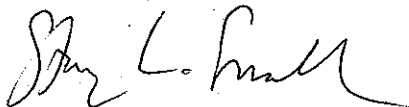
- Lower permit thresholds should be established at higher levels of uncertainty, thus creating an incentive for industry to contribute to a robust monitoring program. We suggest inserting the following language as a concluding sentence to Section 22.26(d)(1)(iii): "Calculations of take permit thresholds will factor in currency and comprehensiveness of population monitoring data. In the absence of adequate population data for either species, more conservative restrictions will be placed on issuance of take permits."
- Post-delisting Bald Eagle monitoring, following protocol established in the National Bald Eagle Monitoring Plan, will yield trend data over the next 20 years. However, trend and demographic monitoring should be greatly improved for Golden Eagles in order to evaluate regional/continental population status, including abundance, nest location, reproductive success, survival, mortality factors, habitat and geographic movement data.
 - State-to-state satellite telemetry data would yield much of the information critical for making conservation decisions related to Golden Eagles. This species is particularly vulnerable to harassment and disturbance at the nest and collisions with man-made structures¹, and their populations face increased pressure from expanding energy development and attendant infrastructure expansion in the western U.S. Furthermore, little is known about Golden Eagle dispersal

patterns, so population declines could be difficult to attribute and correct without a more intensive demographic monitoring program in place.

- Therefore, to improve population monitoring data and the take permit process, we encourage the USFWS to establish a National Eagle Monitoring Fund and to seek Congressional support for the fund. This fund's purpose would be to monitor continental and regional eagle trends and demographics, inform conservation efforts on behalf of both eagle species and facilitate permit decision-making. Monitoring efforts should be overseen by USFWS and results subject to a peer review process.

Thank you for reviewing and considering our comments.

Best regards,



Stacy L. Small, Ph.D.
Conservation Scientist



Michael J. Bean
Senior Attorney

¹Kochert, M. N., K. Steenhof, C. L. McIntyre and E. H. Craig. 2002. Golden Eagle (*Aquila chrysaetos*), The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/684doi:10.2173/bna.684>.