



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Ms. Eliza Savage
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

Dear Ms. Savage:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act, the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Fish and Wildlife Service's (Service) Final Programmatic Environmental Impact Statement (Final PEIS) for the Eagle Rule Revision.

The Final PEIS analyzes five alternatives, including the no action alternative, to establish management objectives and a permitting framework that will ensure preservation of eagles, while decreasing the regulatory burden on the Service and increasing certainty for those engaged in otherwise lawful activities. The Service's incidental take permit regulations provide an opportunity to bring many activities into compliance with the Eagle Protection Act, and in doing so, secure avoidance, minimization, and compensatory mitigation measures to reduce and offset detrimental impacts to eagles. The preferred alternative (Alternative 5) would use: four administrative flyway Eagle Management Units (EMUs), based on historical migratory routes; conservative take levels; and a two tier permit scheme (5-year and up to 30-year for entities that participate in long-term activities that may incidentally take bald or golden eagles, such as wind energy projects). The Service proposes to conduct 5 year periodic reviews of the 30-year permits to reassess fatality rates, effectiveness of measures to reduce take, the appropriate level of compensatory mitigation, and eagle population status.

The EPA reviewed the Draft Programmatic Environmental Impact Statement (Draft PEIS) and provided comments to the Service on July 6, 2016. The rating provided to the Draft PEIS was Lack of Objections (LO). We note the steps that have been taken to address EPA's comments on the Draft EIS. Particularly, the Service has provided additional information on the determination of how the proposed take levels in the preferred alternative would be sustainable given the management objective and the current demographic state of bald eagle populations. The additional information provides clarification that the Service uses a risk-averse strategy in estimating take for each permit, and thus anticipates that underestimation of take will be a relatively rare occurrence (20% of the time).

The EPA recognizes that the permits will include provisions specifying actions that will be taken if take proves to be greater than anticipated. As outlined by the proposed alternative, if a project causes higher take than projected, this will be accounted for after the initial 5-year period by requiring more offsetting

compensatory mitigation and other adjustments to the permit terms and conditions. We note that, in response to public comments, the Service plans to develop reliable metrics for the effectiveness of compensatory mitigation measures to demonstrate that the proposed mitigation will offset take. The EPA also acknowledges the additional discussion on how the Service will work with project proponents, federal agencies, tribes, and local communities to avoid and reduce eagle take, as well as to enforce the applicable laws and regulations to ensure compliance.

The EPA notes that the Service's approach is an attempt to balance all of the facts provided through the EIS analysis and updated Status Report in such a way that incentives for permits are high enough to encourage compliance, yet uncertainty is managed so that risk to eagles is minimized and, eventually, accounted for through the adaptive management process. We continue to recommend that the permit evaluations, which the preferred alternative commits to conduct every 5 years, follow the principles of adaptive management. In line with the principles of adaptive management, we recommend Service clearly define the following in their evaluation planning: monitoring objectives; the level of impact that would trigger additional actions (including mitigation measures that would be implemented should a threshold be exceeded); how long-term mitigation and monitoring for the life of the permit will be funded; and the mechanisms for public disclosure of the monitoring results and the adaptive management decisions.

We appreciate the opportunity to review this Final PEIS and are available to discuss our comments. If we can provide further explanation of our comments, I can be reached at 202-564-7526, or you can contact Megan Barnhart of my staff at 202-564-5936.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Tomiak', with a long horizontal flourish extending to the right.

Robert Tomiak
Director
Office of Federal Activities