



LeRoy N. Shingoitewa
CHAIRMAN

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May 14, 2012

Daniel M. Ashe
Director, U.S. Fish & Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

Public Comments Processing
Attention: FWS-R9-MB-2011-0054
Division of Policy and Directives Management
U.S. Fish & Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203-1610

Re: Proposed Regulations Governing Eagle Take Permitting
Docket No. FWS-R9-MB-2011-0054

Dear Director Ashe and Division of Policy and Directives Management,

I write on behalf of the Hopi Tribe in response to the above-referenced proposed rule published on Friday, April 13, 2012, by the U.S. Fish & Wildlife Service (the Service). *See* 77 Fed. Reg. 22267. The proposed rule would extend the maximum term of programmatic permits for non-purposeful takes under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.*, (Eagle Act) from five years to 30 years and also allow for permits to be transferred to new owners of a permitted facility. As explained below, the Hopi Tribe has very serious concerns about the effects of the proposed rule, and urges the Service not to implement it and instead retain the current five-year term limit.

For at least a thousand years — and probably much longer — the Hopi have lived in the area of present-day northeastern Arizona. All throughout that time, golden eagles have been a key part of the Hopi Tribe's religious practices, which are conducted not just for the benefit of the Hopis, but also for all of humanity. The Hopi view themselves as custodians of the natural world and believe that their clan ancestors return to visit them in the form of eagle nestlings. The health and presence of golden eagles is critical to the survival of the Hopis' religious beliefs and culture. It is no exaggeration to suggest that the Hopi Tribe's ancient religious practices would deteriorate and perhaps cease altogether without golden eagles.

Because of the importance of golden eagles to the Hopi Tribe, the Hopis are alarmed that the Service has proposed to increase the duration of programmatic permits under the Eagle Act by a factor of six for businesses including wind energy facilities and electric transmissions companies, which the Service recognizes present a “known risk to eagles from collisions with wind turbines and electric power lines.” 77 Fed. Reg. at 22274. A 30-year permit duration is simply too long. Several decades should not pass before the Service again requires a permittee to seek authorization for eagle takes.

In recent years, the Service has expressed concerns to the Hopi regarding possible declines in the golden eagle population in some areas. As the Service knows, the Hopi Tribe has multiple reservations about the data and methodologies the Service uses to assess golden eagle populations. Putting those issues aside, however, if the Service thinks the golden eagle population is potentially showing signs of poor health, the Service should focus on reducing existing takes caused by power lines, wind turbines, lead poisoning from bullet fragments, and habitat loss, rather than issuing permits that would allow for the lawful killing of golden eagles for business purposes over a 30-year timeframe.

The Service has not yet obtained sufficient information to make an informed decision about changing the duration of the programmatic permits. In its notice of proposed rulemaking, the Service acknowledges that it has “relatively little information on the impacts of wind energy on eagles.” 77 Fed. Reg. at 22268. In addition, the Service is aware that the available data on golden eagle populations is incomplete. *See, e.g.*, Final Bald and Golden Eagle Protection Act Rule, 74 Fed. Reg. 46836, 46839 (Sept. 11, 2009); Final Environmental Assessment, Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act at 141 (Apr. 2009) (noting the “uncertainty in golden eagle demographic parameter estimates and population size estimates”). Despite this lack of data, the Service did not undertake a full review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* The Service should refrain from implementing the proposed rule until it has collected sufficient data to ensure that the changes to permit duration and transferability will not adversely affect the golden eagle population. Given that the Service expects the permits “if approved, to be in high demand, particularly from wind power generator farms” and estimates that over the next 30 years it could issue more than 1,000 30-year permits, 77 Fed. Reg. at 22272, it is critical that the Service have a thorough understanding of the effects of the proposed rule.

If the Service determines, despite the Tribe’s objections, to go forward with the proposed action, it must explicitly incorporate robust mitigation measures into the terms and conditions of all wind energy permits. For example, the Service can and should require retrofitting of electric distribution lines to avoid the electrocution of birds attempting to use the structures for perching and nesting. The Service should also require that all permittees set aside sufficient funds for additional mitigation that could be required depending on the actual level of take and any new scientific data on the status of eagle populations. Reserving funds for additional conservation work would help to make sure any additional mitigation measures were implemented expeditiously.

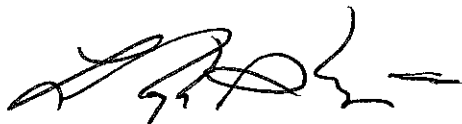
If the Service goes forward with the proposed rule, it must also put in place comprehensive monitoring to protect the eagle populations. The current level of oversight the Service anticipates performing under the proposed rule is grossly insufficient. The Service estimates that only 35 hours of agency time would be needed to visit facilities and evaluate the impacts of proposed activities, and it anticipates that only 140 hours of agency time would be required to monitor reports from permitted facilities over the life of a 30-year permit—an average of just 4.7

hours per year. *See* 77 Fed. Reg. at 22271, Table 4. The Service must devote more resources to monitoring how permittees implement conservation measures to avoid and minimize eagle takes, and must also ensure that permittees implement additional mitigation to the extent they exceed the level of permitted take or if new scientific information indicates that more mitigation is required to protect the health of the eagle population.

The proposed rule also appears to create an insufficient funding regime for 30-year permits. Despite the fact that over time the fees actually needed to administer the program would increase, the proposed rule fixes a permittee's administration fees for the life of the permit. This is particularly problematic with respect to "small-impact" projects, which under the proposed rule would pay no administration fees over the entire 30-year period. These funding inadequacies are concerning because the premise of the proposed rule is that the Service will require additional measures to protect eagles if monitoring data indicate the need for such action. Without adequate funding, however, the Service will be unable to track, evaluate, and act on such data in a timely manner.

The Hopi Tribe reminds the Service that pursuant to its own regulations, Native American religious needs are given first priority if requests for eagle take permits exceed take thresholds compatible with the preservation of the golden eagle. *See, e.g.*, 74 Fed. Reg. at 46840. The Hopi Tribe believes that the proposed rule would fail to safeguard eagle populations and could jeopardize its core traditional tribal religious and cultural needs. Given this, the Hopi believe that consultation is warranted in order to address their concerns and request an opportunity to discuss the proposed changes with the Service prior to any decisions regarding implementation of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy N. Shingoitewa". The signature is stylized and cursive, with a horizontal line extending to the right from the end of the name.

LeRoy N. Shingoitewa,
Chairman