



Comment on Permits for Incidental Take of Eagles and Eagle Nests

Property and Environment Research Center (PERC)

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Main Points

- Allowing permittees to trade excess eagle take authorizations would improve efficiency and better encourage eagle conservation.
- A market for eagle take authorizations would benefit from monitoring and accountability measures.
- Extending the market to include transmission lines would further benefit eagle conservation while lowering compliance costs.

Introduction

The Property and Environment Research Center (PERC) respectfully submits this comment in response to the U.S. Fish and Wildlife Service’s proposal to create a “general permit” for the incidental take of eagles and eagle nests. While this general permit approach would streamline the permitting process and provide greater certainty for industry and the Service, it doesn’t encourage permittees to reduce impacts to eagles on the margin. According to PERC’s research,¹ however, allowing permittees to sell any authorized take they do not use would provide this incentive. Therefore, PERC urges the Service to consider modifications to the proposed rule that would enable markets to boost conservation of bald and golden eagles.

PERC is the national leader in market solutions for conservation, with over 40 years of research and a network of respected scholars and practitioners. Through research, law and policy, and innovative field conservation programs, PERC explores how aligning incentives for environmental stewardship produces

¹ Molly Espey & Eamon Espey, *Using Markets to Limit Eagle Mortality from Wind Power*, PERC Policy Rep. (2022), <https://www.perc.org/wp-content/uploads/2022/07/PERC-PolicyBrief-EagleMortality-220721-WEB.pdf>.

sustainable outcomes for land, water, and wildlife. Founded in 1980, PERC is nonprofit, nonpartisan, and proudly based in Bozeman, Montana.

Tradable permits would allow markets to encourage conservation

Electricity generation from wind energy has increased 56-fold over the past two decades, and now accounts for nearly 10 percent of utility-scale power generation.² The growth in wind energy is likely to continue increasing at a significant pace considering the administration's announced goal of a carbon pollution-free electricity sector by 2035.³

While this growth has had significant benefits, it has also had significant costs. Wind turbines and transmission infrastructure kill between 140,000 and 328,000 birds every year in the U.S.⁴ This includes thousands of eagles protected by the Bald and Golden Eagle Protection Act. Under the proposed rule, approximately 80% of wind energy facilities would be approved under a 5-year general permit that allows them to take an unspecified number of bald and golden eagles in exchange for a predetermined fee based on the facility's size and location.⁵ Once every three months, permittees would have to look for evidence of eagle takes and three or more discovered takes during the five-year permit period can trigger additional monitoring or mitigation requirements.⁶ Because not all evidence of take will be discovered through this infrequent monitoring approach, the Service estimates that facilities will take 16-23 eagles before triggering additional scrutiny.

The proposed rule seeks to limit impacts to eagles without unduly burdening wind energy development. That is a laudable goal. However, the proposal overlooks a critical opportunity to encourage even greater eagle conservation while also lowering costs to industry.

A flat fee based on facility size and location, rather than actual number of eagle takes, gives permittees no incentive to reduce eagle take on the margin or invest in innovative strategies to reduce eagle take. For instance, a facility that is likely to take 15 eagles but could reduce this to 10 by changing its equipment or practices has no incentive to make these investments. They do not lower the upfront fee the facility must pay and, so long as the facility remains under the four-discovered-eagle threshold, the facility faces no consequence from the additional takes.

Issuing eagle take permits on a unit-take basis and allowing permittees to trade their excess take authorizations, however, would encourage these investments. The

² See *Id.* at 1.

³ Exec. Order No. 14057, 3 C.F.R. 694 (2022).

⁴ See Espey & Espey, *Using Markets*, *supra* n. 1, at 1.

⁵ See 87 Fed. Reg. 59598, 59605 (2022).

⁶ See *Id.* at 59,604.

easiest approach would be to set an overall cap of eagle take for a management unit and allow permittees to trade within this cap. This would allow facilities that can reduce takes at lowest cost to do so and be compensated by facilities with much higher mitigation costs. The Environmental Protection Agency, for instance, has adopted this approach under the Acid Rain Program to encourage aggressive and cost-effective reductions in nitrogen oxide and sulfur dioxide emissions.⁷ It has led to annual sulfur dioxide and nitrogen oxide emissions reductions of over 93% and 87%, respectively.⁸

A similar approach of setting a total cap on eagle take, granting developers a number of eagles they can take, and allowing permit holders to trade their quota could help conserve eagles. Some wind farms are in areas where eagles are at high risk of colliding with a turbine. These wind farms might expect to kill more eagles than their caps allow, while others, in less risky areas, would anticipate staying under their limits. An eagle kill avoided would result in an unneeded permit, which could be sold—perhaps to an operator that intends to expand production. Each wind farm would bear the cost of killing any additional eagle, motivating them to operate more safely, innovate lower-impact designs, or consider different sites for future projects. Trading zones could be created to account for regional variation in eagle populations.

A permit market for eagle conservation could be incorporated into the current proposal by making the four-discovered-eagle threshold more flexible. If a facility could raise or lower its threshold for additional monitoring or mitigation by trading with other permittees, this would encourage cost-effective investments in eagle conservation.

A trading system requires accountability

Third-party monitoring or similar accountability mechanism would be helpful to a transferable unit-take permit system, by ensuring that parties know what they are trading and abide by their trade terms. The costs of monitoring eagle take are likely to be similar under a tradable permit system as under the current system. Third-party monitoring of mitigation and take is already in place and could be required for all wind farms under a new system.⁹

A transferable permit system with accountability mechanisms also creates an incentive for permit holders to report both their incidental take, as well as the incidental take of non-permit holders.¹⁰ As a permit holder, they will want to ensure

⁷ Clean Air Markets: Market-Based Mechanisms, envt'l prot. agency (Apr. 24, 2022), <https://www.epa.gov/airmarkets/market-based-mechanisms>.

⁸ Acid Rain Program Results, envt'l prot. agency (Jun. 24, 2022), <https://www.epa.gov/acidrain/acid-rain-program-results>.

⁹ See Espey & Espey, *Using Markets*, *supra* n. 1

¹⁰ *Id.*

that their eagle take remains within their allotted permit share. They will also be motivated to monitor for non permitted take by others, whose inclusion within the market would boost the value of their permits. In comparison, the Service's current proposal without transferable permits will do little to discourage unpermitted eagle take.

Expanding the market to include transmission line owners would increase economic efficiency and encourage more conservation

Wind energy is not the only energy source threatening eagle populations. Every year, power line electrocution kills roughly 11.6 million birds in the United States, including eagles.¹¹ The Department of Energy has cited independent estimates finding that the United States may need to triple current electricity transmission capacity by 2050, to achieve the Biden Administration's clean energy goals.¹² Eagle takes are likely to increase as a result.

For that reason, incidental take permits should be transferable between types of energy facilities. Wind farms should be able to transfer permits with electric-transmission companies and vice versa. This would not impact the overall cap set by the Service for eagle take and presents an opportunity for conservation at a lower cost. The more diverse instances of take recognized and made transferable in the market, the more efficient the market will be. If it is more cost-friendly to some energy facilities to reduce eagle take than others, a transferable permit system will naturally create incentive for those sources to transfer their permits to other cost-intensive sources. This not only benefits both parties but also benefits the United States. Clean energy innovation will continue to expand, since those energy sources who transfer their permits will obtain additional monetary value. At the same time, eagle conservation efforts will be more effective.

Conclusion

PERC appreciates the Service's efforts to protect eagle populations. Incentives for energy facilities to reduce take on the margin would further aid eagle conservation. Tradeable permits could effectively provide these incentives, while also lowering the cost of conservation.

¹¹ JoAnn Greco, *A Shocking Toll*, NAT'L WILDLIFE FED. (Feb. 1, 2021), <https://www.nwf.org/Home/Magazines/National-Wildlife/2021/Feb-Mar/Animals/Eagles-and-Powerlines>; Scott R. Loss et al., *Refining Estimates of Bird Collision and Electrocution Mortality at Power Lines in the United States*, PLOS ONE (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4081594/>.

¹² See *DOE Launches New Initiative From President Biden's Bipartisan Infrastructure Law to Modernize National Grid*, DEPT. OF ENERGY (Jan. 12, 2022), <https://www.energy.gov/oe/articles/doe-launches-new-initiative-president-bidens-bipartisan-infrastructure-law-modernize>.