

**Supporting Statement A for
Paperwork Reduction Act Submission
OMB Control Number 1018-0167**

**Eagle Take Permits and Fees
50 CFR 22**

Note: Information collection requirements for migratory bird permits are approved under OMB Control No. 1018-0022, which expires May 31, 2017. Eagle permits are included under that approval. This ICR contains information collection requirements and fees for the permits affected by the proposed rule. If OMB approves this collection, we will incorporate the new requirements into the renewal of OMB Control Number 1018-0022 and discontinue this OMB Control No.

1. Explain the circumstances that make the collection of information necessary.

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at Title 50, part 22 of the Code of Federal Regulations (CFR), define the “take” of **an eagle to include the following broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.”** The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations.

Regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles, where the taking is associated with, but not the purpose of, an activity (non-purposeful take). The current regulations provide for both standard permits and programmatic permits. Permits authorize individual instances of take that cannot practicably be avoided and authorize recurring take that is unavoidable even after implementing all practicable best management practices and other measures and practices that are reasonably likely to reduce eagle take.

We are revising our regulations for permits authorizing certain prohibited actions involving eagles.

We are removing the distinction between standard and programmatic permits, codifying standardized mitigation requirements that comport with the Service’s draft mitigation policy, and extending the maximum permit duration for eagle non-purposeful take permits (50 CFR 22.26). The regulations also include a number of additional revisions to the eagle incidental take and eagle nest take regulations at 50 CFR 22.27, as well as revisions to the permit fee schedule at 50 CFR 13.11.

In April, 2012, the Service initiated two additional rulemakings: (1) a proposed rule to extend the maximum permit duration for programmatic eagle non-purposeful take permit regulations from 5 to 30 years, among other changes (“Duration Rule”) (77 FR 22267), and (2) an advance notice of proposed rulemaking (ANPR) soliciting input on all aspects of those eagle non-purposeful take regulations (77 FR 22278).

The ANPR highlighted three main issues for public comment: our overall eagle population management objectives; compensatory mitigation required under permits; and the non-purposeful take programmatic permit issuance criteria. As a next step, the Service issued a notice of intent to prepare an environmental assessment (EA) or environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et

seq.) (79 FR 35564, June 23, 2014). The Service then held five public scoping meetings between July 22 and August 7, 2014.

The Duration Rule was finalized on December 9, 2013 (78 FR 73704). However, it was the subject of a legal challenge, and on August 11, 2015, the U.S. District Court for the Northern District of California vacated the provisions that extended the maximum programmatic permit tenure to 30 years. *Shearwater v. Ashe*, No. CV02830-LHK (N.D. Cal., Aug. 11, 2015). The court held that the Service should have prepared an EA or EIS rather than apply a categorical exclusion under NEPA. The effect of the ruling was to return the maximum programmatic permit term to 5 years, but did not affect any other part of the rule.

The Service has prepared a programmatic environmental impact statement (PEIS) to analyze eagle management objectives and these proposed revisions to the 2009 eagle permit regulations. The PEIS is available on the Service's website at: <https://www.fws.gov/birds/management/managed-species/eagle-management.php> and at: www.regulations.gov at Docket No. FWS-R9-MB-2011-0094.

The 5-year maximum duration for permits appears to be a primary factor discouraging many project proponents from seeking eagle non-purposeful take permits. Many activities that incidentally take eagles due to ongoing operations have lifetimes that far exceed 5 years. We need to issue permits that align better, both in duration and the scale of conservation measures, with the longer term duration of industrial activities, such as electricity distribution and energy production. Extending the maximum permit duration is consistent with other Federal permitting for development and infrastructure projects.

Eagle non-purposeful take permits fall into 2 general categories of duration: short term, of less than 5 years duration and long term, those that are 5 years and longer. To recoup the cost of processing longer-term permits, which are more complex due to the need to develop robust adaptive management measures, we will assess a \$36,000 permit application processing fee for eagle non-purposeful take permits of 5 years duration or longer. The permit processing fee for 5-year programmatic permit applications is \$36,000 currently. A commercial applicant for a non-purposeful take permit of a duration less than 5 years will pay a \$2,500 permit application processing fee, an increase from the current fee of \$1,000 for programmatic permits and \$500 for standard permits. The higher fee better reflects the costs of processing those permits. The amendment fee for those permits increases from \$150 to \$500 for commercial entities. The incidental take permit application processing fee for non-commercial (this category was referred to as "homeowners" in the proposed rule) would remain \$500 and the amendment fee for those permits also remains unchanged at \$150. The higher fees for commercial entities will recover a larger portion of the actual cost to the Service, including technical assistance provided to the potential applicant by the Service prior to receiving the actual permit application package. Commercial entities have the opportunity to recoup the costs of doing business by passing those costs on to their customers. For Non-commercial (referred to as "homeowners: in proposed rule) permits, the fees remain the same, even though Federal agencies are directed to recoup the full costs of processing permits. The reality is that many of the non-commercial applicants who justifiably need eagle permits would not be able to pay the actual full cost to the Service of providing technical assistance and processing their permit applications.

We will assess an \$8,000 user fee called an Administration Fee every 5 years for long-term permits. This fee is intended to cover the cost to the Service of conducting a 5-year evaluation and developing any appropriate modifications to amend the permit.

The distinction between programmatic and standard permits also applies to § 22.27 nest take permits. The permit fee for removal or destruction of a single nest will remain at \$500. For the same reasons as described above for § 22.26 permits, a commercial applicant for a nest take permit for a single nest will pay a \$2,500 permit application processing fee, an increase from the current fee of \$500 for standard permits and \$1,000 for programmatic permits. The amendment fee for those permits will increase from \$150 to \$500. For permits to take multiple nests, the fee is \$5,000 versus \$1,000 for programmatic permits, currently. For homeowners and other non-commercial entities, the nest take permit application processing fee and amendment fee will not change.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

The following application and reporting information collection is approved under OMB Control Number 1018-0022:

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone and fax numbers, tax identification number (or social security number for sole proprietors), and email address. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity and that any permit issued is consistent with the Service's population goals for bald and golden eagles. Respondents submit application forms periodically, as necessary. Submission of reports is generally on an annual basis, although some are dependent on specific transactions.

Applications (includes researching permit requirements, conducting preapplication surveys/studies, and completing the application form)

We will continue to use FWS Form 3-200-71 (Eagle Take–Necessary to Protect Interests in a Particular Locality) as the application for non-purposeful (incidental) take permits. These permits allow non-purposeful take of eagles that is incidental to otherwise lawful actions. We will continue to use FWS Form 3-200-72 (Eagle Nest Take) as the application for eagle nest take permits. These forms are used regardless of the duration of the permit issued.

The information we collect on FWS Form 3-200-71 and Form 3-200-72 allows us to assess the qualifications of applicants for permits and that any permit issued is consistent with the Service's population goals for bald and golden eagles. These forms are approved under OMB Control Number 1018-0022, which expires May 31, 2017. We are not making any substantive changes to these forms. We will only modify Section D to indicate the new permit fees.

Monitoring and Reporting

Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed. Permit recipients will use FWS Form 3-202-15 (Eagle Take (50 CFR 22.26) – Annual Report) to meet the reporting requirements at 22.26(c)(3). The

permittee is required to submit this form regardless of whether any take occurred (i.e. report no take). This form is approved under OMB Control No. 1018-0022, which expires May 31, 2017. We are not proposing any changes to this form. We use this information to evaluate compliance with the terms and conditions of the permit, and results of measures to minimize and mitigate impacts on covered species. For long-term permits, we would also use the data to evaluate whether the permittee will implement adaptive management strategies set forth in the terms of the permit. We will use the results of these evaluations to:

- Determine if the conservation strategies are reaching the intended biological goals.
- Implement improved management strategies.
- Evaluate the success of the permit program.
- Gather information needed for future permit issuance determinations.

For long-term permits, applicants are required to conduct pre-construction surveys. Because these activities are often complex, to meet the application requirements, applicants sometimes prepare an Eagle Conservation Plan. Long-term permittees must ensure post-construction monitoring is conducted and that the results are provided to the Service. The pre-construction surveys are needed to estimate the likely number of eagles that could be killed by the project and are used to determine any required compensatory mitigation. The Eagle Conservation Plan is a format for compiling information required by the application, such as estimates of risk to eagles, detailed description of the measures the project will undertake to avoid and minimize the take of eagles, adaptive management actions, and specification of the type and amount of compensatory mitigation they commit to complete. Post-construction monitoring is used to determine the adequacy of the avoidance and minimization measures, to determine if the amount of compensatory mitigation is adequate and to evaluate the success of the permitting program.

Permittees are also required to promptly notify the Service via email or phone if an injured or dead eagle or Threatened or Endangered species is found in the vicinity of the permitted activity.

Permit Review

Under the proposed regulations, every 5 years, long-term permittees would be required to compile information on eagle fatality (post-construction monitoring) and submit this information to the Service. We propose to assess a \$8,000 user fee called an Administration Fee every 5 years for long-term permits to cover the cost to the Service of conducting the 5-year evaluation and modifying permits when amendments are determined necessary.

The final rule would establish a reporting requirement for 5-year permit reviews. We estimate 4 responses per year with 8 hours per response totaling 32 annual burden hours (see item 12).

Recordkeeping

Permittees must keep records of the take that occurs from the permitted activity and the data gathered through surveys and monitoring.

Amendments

Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to an increase or decrease in the estimated take of eagles or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a

description of the modified activity and the changed impacts to eagles. These are considered substantive amendments and incur a fee. Minor changes such as a change in address or principal officer do not incur a fee or require the permit to be amended. The burden associated with amendments is included in the burden for the 5 year review.

Transfers

Permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by U.S. Fish and Wildlife Service revoked within the last 5 years, and have not been convicted of violating a Federal wildlife law. We are removing the provisions for transfer of a programmatic permit from a permittee to another entity that were codified at § 22.26(i). Those provisions were unnecessary because § 13.25(b) already provides for transfer of § 22.26 eagle incidental take permits.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.]

FWS Forms 3-200-71, 3-200-72, and 3-202-15 are available in fillable format on our forms website (<https://www.fws.gov/forms/>), by mail, or by fax. Applicants may complete the fillable application online, but must print and send the application form with an original signature and the processing fee to the Service by mail. At this time, we do not have a complete system for electronic submission of permit application or report forms; however, we are actively developing the system and have implemented one electronic form and are pilot testing 12 additional application and associated report forms that have current OMB approval. Applicants may send us any supporting documentation or information missing from the application, other than original signature, via electronic mail or fax. Some Regional permit offices accept annual reports via electronic mail.

4. Describe efforts to identify duplication.

The information that we collect is unique to the applicant and is not available from any other source. We keep application and reporting information in office files to eliminate repeat or duplicate requests in the case of renewals, extensions, or repeat applications. We have developed an electronic permit issuance and tracking system that greatly improves retrieval of file information, therefore further reducing duplicate information requests for use in renewals, amendments, and repeat applications. Since only the Service may issue this type of permit and only for species under our jurisdiction, there is no duplication of other agencies efforts. Ongoing development of our permit issuance and tracking system will ensure that no duplication arises among Service offices.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

The information requested on the application form is limited to the minimum necessary to establish eligibility and the information requested on the reporting forms is the minimum necessary to enable us to assess the effect of the permit program on eagles.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal

obstacles to reducing burden.

If we do not collect the information, or if we collect the information less frequently, we could not issue applicants a permit since the collected information is either required to allow the Service to make issuance decisions, or is needed to make necessary biological and legal findings under applicable statutes and treaties. If we were not able to collect the information necessary to issue a permit, the public would not be able to lawfully conduct activities that cause incidental take of eagles or that necessitate removal of an eagle nest. Furthermore, the timely submission of data on the effects to eagles of permitted activities enables the Service to determine when adaptive management measures must be implemented by the permittee to ensure the activity remains compatible with the preservation of eagles.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;**
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * requiring respondents to submit more than an original and two copies of any document;**
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Permittees are required to report take of an eagle within 48 hours of discovery or within one week for take or injury of a Threatened or Endangered species. This requirement serves two purposes. First, it allows the Service to determine if additional measures need to be implemented to prevent future death or injury to eagles or Threatened or Endangered species. Second, it allows the Service's Office of Law Enforcement to determine if the taking or injury was in compliance with the terms of the permit. Guidance on how to comply with this requirement is contained in the permit itself. Here is an example of the wording included in a permit:

Reporting:

(1) You must report any bald eagle or golden eagle found dead or injured to the RMBPO within one working day of its discovery. Your email and/or subsequent reports must include as much of the data listed in condition H above that is available for each incident including the eagle's unique incident tracking number. Submit reports to:

· RMBPO: Heather Beeler (heather_beeler@fws.gov <mailto:heather_beeler@fws.gov> , phone: 916-414-6651)

(2) Report any dead or injured threatened or endangered species as specified in the Shiloh IV Wind Project, LLC's Endangered Species Act section 10(a)(1)(B) incidental take permit, number TE70433A-0.

(3) A written mortality or injury report specific to the eagle or ESA-listed species must be submitted to your RMBPO contact. Reports are to include the data in condition H and be submitted no later than one week (7 days) from the date of discovery of the carcass or injured animal.

A list of threatened and endangered species by State may be found in the U.S. Fish and Wildlife Service's (Service) Threatened and Endangered Species System (TESS) database at: <http://www.fws.gov/angered>.

(4) In accordance with 50 CFR § 22.26(c)(3), you must submit an annual report summarizing the information obtained through monitoring, including any dead or injured eagles discovered and/or collected, to the RMBPO by January 31 following each calendar year in which the permit is in effect, except for the final year of the permit term if this permit is not renewed. The annual report for the final year of this permit must be submitted within 60 days of permit expiration, unless the permit is renewed.

Please use report form 3-202-7, unless otherwise notified by your RMBPO in writing. Clearly indicate that you are reporting on your Programmatic Eagle Take Permit and include your permit number. The form may be downloaded at: <http://www.fws.gov/forms/3-202-7.pdf>.

Reports must be emailed to the RMBPO contact (heather_beeler@fws.gov) and a signed hard copy mailed to:

Heather Beeler
Eagle Permit Coordinator
USFWS Pacific Southwest Region
2800 Cottage Way W-2606
Sacramento, CA 95825

Federal regulations governing fish and wildlife permits at 50 CFR §13.46 require permittees to maintain records for 5 years from the date of expiration of the permit.

Applicants for eagle permits are required to submit data regarding their project that some in industry consider proprietary trade secrets. Applicants are asked to clearly identify any data they believe are of a proprietary nature. These data are stored on computers or in paper files. Computer access is controlled through 2-factor authentication and by industry standard firewalls and virus protection. Paper files are stored in access controlled offices in locked file drawers. Individuals are required to submit personally identifiable information (PII). This information is stored on computers and in paper files. The PII is entered into a System of Records that must meet federal standards for protection of such information. As with the industry data, access is controlled through 2-factor authentication as well as industry standard firewall and virus protection. Paper forms are stored in access controlled offices in locked file drawers. Disclosures outside the Department of the Interior may be made if the disclosure is compatible with the purposes for which the record was collected. (Ref. 68 FR 52611, September 4, 2003) or is otherwise required by law.

Other than these requirements, there are no special circumstances that would cause us to conduct this information collection in a manner inconsistent with OMB guidelines.

8. Provide the date and page number of publication in the Federal Register of the

agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

We published a proposed rule soliciting public comments on the information collection requirements on Friday, May 6, 2016 (81 FR 27934). The following comments related to this information collection were received during the period from May 6-July 5, 2016.

General

Comment: How is the Service going to find out if protected species have been taken since it relies solely on the regulated industry to volunteer that they have broken the law? The wind energy industry (which is already paying for their own studies) should contribute to a fund that the Service will use to hire independent experts to conduct pre-construction risk studies and post-construction bird and bat mortality studies.

Response: We agree that independent third-parties reporting directly to the Service should monitor take under long-term permits, and we have incorporated this requirement into the final regulations.

Comment: The regulations should include a requirement that all baseline and post-construction data on wildlife will be made fully available to the public as soon as possible. Lack of transparency is a pervasive problem. Reports of baseline studies and of impacts monitoring at wind projects are increasingly kept confidential. These data pertain to public trust resources, and should not be kept confidential.

Comment: The Service should also establish mechanisms to automatically provide all data and reports, including raw data collected on-site, to the public in real-time and as soon as it is available.

Comment: The Service should require that all monitoring data (reports and raw monitoring data) be submitted electronically to a publicly available database. Federal agencies are moving towards electronic reporting as evidenced by the Environmental Protection Agency's (EPA) "Next Generation Compliance" initiative. The Service should develop a public electronic portal/database from which it can track permit compliance, authorized take across populations, and publish proposed and final permitting decisions. This portal would allow stakeholders and regulators to quickly search permits and quickly access all available monitoring reports and five year reviews. This approach would not only facilitate transparency but also provide a valuable tool for its staff to track permit compliance. "

Response: The permit regulations already contained the provision that all mortality data will be available to the public prior to this rulemaking. We will post cumulative reported mortality data that is summarized to a state and flyway level on a website that can be viewed by the general public. We will consider posting pre-construction (or pre-permitting) data that we require as part of the permit application for projects that receive eagle take permits.

Comment: The Service should provide more clarity and transparency concerning data collected concerning causes of eagle mortality in the United States. As the agency responsible for the National Eagle Repository (NER), the Service is in a unique position to obtain, track, and disclose data surrounding eagles being sent to the repository. Disclosure of this data would provide a necessary starting point to check the accuracy of Service priorities regarding eagle mortality in the United States.

Comment: Tribes should have access to eagle injury and death reporting related to their historic reservation areas to provide for better collaboration regarding eagle incidents. Eagle injury and death incidents should be coordinated with tribal eagle research facilities as a collaborative measure to ensure improved data and research related to wind turbine impacts.

Response: The Service is in the process of developing a database to centralize and grow the dataset on injury and mortality incidents involving eagles and other birds across the nation. This will include data on any eagles recovered by, reported to, or delivered to the Service and/or any partners who data share with the Service, and will include eagles that go on to be sent to the NER. The database is still being populated with a number of historical records and prepared for use by others outside of the Service, but is anticipated to be fully functional by the end of 2017. Once the database is populated and fully operational, we do anticipate that some level of information will be made publicly available, along with information on the role these data play in helping the agency address and research impacts to eagles and other birds. It is important to note that the Service will not be depending solely on the data collected in this database to accurately depict the relative causes of eagle and other bird mortality across the landscape. While some of the data collected in the database should help to inform these questions, there are targeted, structured studies that are more useful for this purpose. A list summarizing these studies is available upon request, but a good example is a study the Service is conducting that involves using the fates of a sample of satellite-tagged eagles to estimate the importance of different mortality factors, as described in the Status Report. We note that many native American tribes have been active participants and collaborators in that study, and that collaboration has greatly improved the extent and scientific quality of the findings.

Comments: The Service has stated that: "The current regulations provide that eagle mortality reports from permitted facilities will be available to the public. We will also release mortality data on other migratory birds if we receive that data as a condition of the permit, provided no exemptions of the FOIA (5 U.S.C. 552) apply to such a release. If we receive mortality data on a voluntary basis and we conclude it is commercial information, it may be subject to Exemption 4 of the FOIA, which prevents disclosure of voluntarily submitted commercial information when that information is privileged or confidential." That statement strongly suggests that the Service will accede to the wishes of companies that desire to shield from the public their impacts on public trust resources—which is hardly consistent with the purposes of the Eagle Act, MBTA, or the FOIA. Any wind energy company could declare that disclosure of eagle kill data could hurt its bottom line or is somehow "confidential" business information, with the result that virtually all eagle mortality data will likely continue to remain unavailable to the public and concerned conservation organizations.

Response: Under FOIA Exemption 4, the Service independently determines whether submitted data is commercial information not subject to disclosure (confidential business information), whether or not it is marked as such by the submitter. A submitter cannot simply insulate information from disclosure under FOIA by marking it as privileged or confidential and expect the Service to accede without an independent analysis. Also, there is a distinction between "voluntarily submitted" records and records that are required to be submitted, and in the language quoted by the commenter, we were talking about other birds in addition to

eagles. Under eagle take permits, submission of eagle mortality information is not voluntary, and our regulations, both current and proposed, require data on permitted eagle mortality to be publicly available.

Comment: The Service should mandate that each permit application identify affected tribes in the requisite eagle conservation plan. Consultation with tribes should occur at every stage of the permitting process. The regulations should ensure that affected tribes receive notice by sending a copy of each eagle take permit application to tribes. If this is not feasible due to legal, confidentiality, or other concerns, tribes should at least receive notice of an application and information necessary to allow for effective and meaningful consultation. And, affected tribes should be included in the NEPA analysis of each permit. To ensure increased participation and input by tribes in the NEPA process, affected tribes should be invited to serve as cooperating agencies under NEPA. Further, the Service should send a copy of an eagle take permit to all affected tribes upon the issuance of that permit.

Comment: Tribes that will be affected by eagle take authorized under a particular permit must be identified and contacted to facilitate participation in the permit decision-making process. The Service should cast the widest net possible to identify "Affected Tribes," which the regulations should broadly define to include: (i) all tribes with an interest in eagles in the vicinity of a wind energy project, or (ii) all tribes that may have interest in eagles within the relevant flyway.

Response: We maintain our commitment to consulting with interested tribes as early as possible in the permitting process when issuance or review of individual permits may affect a tribe's traditional activities, practices, or beliefs. We do not think it is appropriate to require a permit applicant to identify potentially affected tribes. Instead, it is incumbent on the Service to make that determination. Thus, we will continue to rely on our trust relationship and open communication with each federally-recognized tribe to help us determine when a project may affect tribal interests. Because of the myriad differences in the interests of federally-recognized tribes regarding eagles, we do not find it appropriate to limit or circumscribe consultation with individual tribes by outlining a more specific framework for the consultation process. Each consultation will depend on the specific needs and concerns of the affected tribe. In some cases, it may be appropriate to consult with a tribe regarding its interest in projects occurring in a region or flyway. In other cases, it may be appropriate for a tribe to act as a cooperating agency for the NEPA process for an eagle permit. Regardless of any consultation process, the effects of an eagle permit on tribal cultural, religious, or socioeconomic interests will be analyzed in the NEPA document for that permit.

Comment: In the proposed rule, the Service provided a response to comments that implies requiring a Bird and Bat Conservation Strategy (BBCS) is consistent with its regulations: A BBCS is a vehicle created by the 2012 Land-based WEG. Requiring a BBCS contradicts the voluntary nature of the WEG, and also contradicts the WEG-created concept of the BBCS. The Service should clarify in the preamble to the final rule that a BBCS (or collection of documents that serve the function of a BBCS) is voluntary.

Response: Preparation of a BBCS is voluntary under the WEG. Preparation of an eagle conservation plan is voluntary under the ECPG. Neither the WEG nor the ECPG confer the take authorization necessary to shield an entity from enforcement for prohibited take under the Eagle Act. A permit is the necessary mechanism to confer the authorization needed to take eagles, and permits require avoidance and minimization measures. Some applications for eagle permits (e.g., for most wind energy facilities and other projects that are large-scale and have the potential for significant or ongoing impacts) will require essentially all the information and commitments that are generally found in a BBCS. In those cases, the compilation of

information submitted need not be referred to as a "Bird and Bat Conservation Strategy" (particularly if take of bats is not likely) or an ECP, but whatever it is called does not change the requirement that certain information necessary for the Service to determine that the applicant will undertake appropriate avoidance and minimization measures must be submitted by the applicant.

Fatality Prediction Model

Comment: The proposed rule implies that survey protocols the Service has developed for the wind industry will be applied to all activities that may require incidental take permits. This is inefficient and ignores that other protocols might be more suited to other activities.

Response: The Service's proposal would only require use of industry- or activity- specific protocols when they exist. At this point the only such standards are those included in the final rule for estimating eagle take at wind facilities. The Service plans to develop standards for other industries in the future, and will seek industry input in the development of those protocols.

Comment: The collision risk model (CRM) recommended by the Service for eagle fatality estimation at wind projects relies on a sample size that is too small and data that is too outdated to provide reliable predictions for either golden or bald eagles. Research recently published in a peer-reviewed scientific journal provides new collision probability rate estimates that are based on more recent data and a larger data set collected from modern wind facilities. The Service should revise its model inputs to reflect this new information.

Comment: Codifying the Service's CRM to estimate eagle fatalities at wind facilities is not appropriate because the model has changed four times since it was introduced in 2013. Incorporation into the rule will inhibit further necessary improvements.

Response: The Service has always intended to revise the collision probability component of the CRM using data collected under eagle incidental take permits at wind facilities. However, to date so few incidental take permits have been issued at wind facilities that no progress has been made in this area. As an alternative for the immediate future, the Service believes that publicly available data collected at wind facilities operating without incidental eagle take permits can be appropriate for such an update, provided the data and protocols under which the data were collected can be verified and shown to be appropriate, and that the wind facilities that make their data available constitute a representative cross section of wind facilities in operation today. The Service is working with the authors of the referenced paper to conduct an evaluation of their data to determine if it meets the above criteria for use in updating the CRM. As to the CRM having changed rapidly since it was introduced, that is not the case. The CRM described in Appendix D of the ECPG is still the version being used by the Service. The CRM has had to be adapted on occasion to accommodate data collected by prospective permittees that did not follow Service guidance in Appendix C of the ECPG, but the CRM remains unchanged. As noted above, we do expect model inputs to change, and as noted in response to other comments, over time we may incorporate other scientifically supported covariates associated with eagle collision risk into the CRM. In response to this and other comments the Service has decided not to incorporate any parts of the ECPG into the rule so that future updates can be implemented without going through formal rulemaking. However, any such updates affecting the CRM will be made available in the form of a formal revision to Appendix D of the ECPG after the opportunity for notice and public comment.

Comment: The rule should not restrict monitoring and survey options for wind projects to Service-approved ECPG protocols. The best available science should be applied to risk assessment and fatality monitoring.

Response: The Service's eagle non-purposeful take permits program follows DOI policy by using a formal adaptive management (AM) framework to quantify and reduce scientific uncertainty. A major area of uncertainty is the mortality risk posed to eagles by individual wind facilities. When the Service created the non-purposeful take rule in 2009 there was no scientifically accepted way to estimate such risk. However, the Service must authorize a specific eagle take limit for each permit in order to ensure cumulative take from all permitted projects does not exceed regional take limits, or if take limits are exceeded, that appropriate compensatory mitigation is carried out. Service and U. S. Geological Survey scientists developed the CRM to estimate eagle fatalities at individual wind facilities using AM; this approach necessitates the collection of standardized pre- and post-construction data and the use of the CRM, or a model much like it, to generate and update fatality estimates. For this reason, in the proposed rule the Service contemplated codifying its current guidance regarding data collection and fatality predictions in the regulations. As this comment reflects, there was considerable opposition to this among commenters. In response, the Service has modified its proposal for the final rule by dropping the proposal to codify parts of the ECPG in the final rule. However, the AM process cannot function credibly without standardized pre-construction site-specific eagle exposure data, so the Service has instead incorporated minimum standards for such data for incidental take permits at wind facilities directly into the final rule, subject to waiver under exceptional circumstances. The Service also will not require permit applicants to use the CRM to estimate eagle fatalities for their permit applications; permit applicants can use any credible, scientifically peer-reviewed model to generate eagle fatality and associated uncertainty estimates for their applications. However, the Service will use the CRM and applicant-provided data to predict fatalities for each incidental eagle take permit for a wind facility. The Service will treat any alternative models used by the permit applicant as candidate models whose performance may be compared formally to that of the CRM as part of the AM process.

Comment: The Service's CRM is flawed and should not be required for use to estimate fatalities at wind facilities.

Response: The Service's CRM was designed as an integral part of the AM process, with model complexity and performance improving over time with use and formal updating. The CRM uses a Bayesian framework that allows for the formal combination of existing (prior) data with project-specific data for eagle exposure and collision probability. The Service requires eagle incidental take permit applicants to conduct pre-construction eagle use surveys within the footprint of the planned wind facility to generate project-specific data on pre-construction eagle exposure. In the case of collision probability, however, there are no project-specific data to combine with the prior data until after the project has operated for several years. The Service uses prior information on collision probability from the only wind facilities that had publicly available data on eagle use and post-construction fatalities in 2013; these data came from four facilities, did not include information for bald eagles, and some data were from older-style wind turbines that might have different collision probabilities than modern turbines. However, these deficiencies only affect the initial eagle fatality estimates at permitted wind facilities. The AM approach calls for formally combining the prior information with standardized data collected on actual eagle fatalities after each facility becomes operational. These updates would occur no less frequently than once every five years at each facility. Such updates will naturally correct for any bias in the initial "collision-prior-based" fatality estimate, so that the fatality estimates over most of the life of a wind facility will be heavily weighted towards actual fatality data from the site. Moreover, the post-construction fatality information can be combined with data from other permitted wind facilities to update and improve the collision probability prior for the national CRM. Thus, the Service intends to

improve the predictive accuracy of the CRM both at the individual project level and nationally through standardized use as a formal part of its AM process.

Comment: Eagle use, the main predictor variable in the CRM, is a poor predictor of eagle fatality risk. Use rates certainly failed to predict the golden eagle fatality rate at several wind facilities in Wyoming. Other factors besides eagle use are more important in determining eagle collision risk.

Comment: The Service's current CRM assumes that modern wind turbines have the same risk profile as wind turbines installed many decades ago despite evidence to the contrary.

Response: The Service disagrees that use rates cannot be used to predict eagle fatality risk. For example, the Service has demonstrated that use rates actually performed very well as predictors of golden eagle fatality risk at the same Wyoming wind facilities referenced in this comment. In fact, those facilities were used to demonstrate the effectiveness of the Service's CRM and AM updating process for a scientific peer-reviewed journal article (New et al. 2015). However, the Service agrees that other factors besides eagle use likely affect collision risk. The ECPG identifies 11 general categories of covariates that we believe may affect eagle collision probability to some degree, including three that relate to turbine design. However, these are not presently incorporated into the CRM because, as pointed out by peer-reviewers of the draft ECPG, scientific support for the role of these factors in collision risk is speculative and not quantifiable at this time. Furthermore, the effects of these factors may be heterogeneous across locations. The Service believes that over time, through application of the AM process, scientific support will accrue for inclusion of some of these covariates in the CRM.

Comment: Our Project Eagle Conservation Plan using the Service's CRM estimated eagle take of one eagle per year. However, no eagle carcasses have been found in 3 1/2 years of professional biologists monitoring.

Response: The fact that no eagle mortalities have been discovered does not mean that no eagles have been killed. Detection rates for eagle carcasses on surveys are less than perfect, and scavengers can remove carcasses before they are detected. The Service relies on estimates that account for these factors that affect detection probability to estimate the actual eagle fatality rate. Also, as discussed in other responses, under the AM framework, estimates of the numbers of eagles killed that account for search effort, detection, and scavenging based on the monitoring data would be used to update the CRM for the project and improve future predictions of fatalities based on site specific data.

Comment: The Service's CRM vastly over-estimates golden eagle mortality on the wind projects we've analyzed.

Response: The Service has made the explicit decision to manage the quantified uncertainty in the CRM estimates in a manner that reduces the risk of underestimating eagle fatalities at wind facilities. The median (50th quantile) fatality rate estimate is the point at which there is an equal risk of under- and overestimating eagle fatalities. The Service uses the 80th quantile of the CRM estimate as the take limit for incidental take permits, which shifts the risk in an 80:20 ratio away from underestimating eagle take. The Service believes this is appropriate because the consequences of underestimating eagle take are far greater than the consequences of overestimating take, and not just because of unintended consequences on eagle populations. For example, if eagle take at the individual permit level was consistently underestimated, many permittees would exceed their permitted take limits, necessitating permit amendments, additional costly and unplanned after-the-fact compensatory mitigation

actions, and possible enforcement action with associated fines. For bald eagles with positive EMU take thresholds, consistently underestimating take could lead to permitted take exceeding the EMU take limit, which would necessitate retroactively requiring permittees that initially had no compensatory mitigation requirements to implement mitigation after-the-fact. Finally, if LAP take limits were unexpectedly exceeded, NEPA compliance for permits overlapping the affected LAP would have to be reviewed, possibly resulting in the need to develop supplemental NEPA documents or new Environmental Assessments or Environmental Impact Statements for operating wind projects. Although these consequences are most likely if there is a systematic bias in the fatality estimates themselves, even with an unbiased estimator some of these consequences could be expected with 50% of permits if the Service were to use the median fatality rate as the take limit for individual permits. In contrast, if permitted take is set at a higher percentile of the fatality prediction, the primary consequences are that the permittee is likely to exceed actual compensatory mitigation requirements over the first five years of operation (if compensatory mitigation is required). Additionally, the Service would likely routinely debit some take from the EMU and LAP take limits unnecessarily, thereby underestimating available take when considering new permit requests. Both of these issues are at least partially remedied when initial take estimates for projects are adjusted with project-specific fatality data after the first five years of operation.

Comment: The Service should adopt an approach that only requires mitigation for actual, not predicted, eagle take under permits. Otherwise, permittees are unfairly having to overcompensate for the true effect of their projects.

Response: The Service must authorize a specific eagle take limit for each permit in order to ensure cumulative take from all permitted projects does not exceed regional take limits, or if take limits are exceeded, that appropriate compensatory mitigation is carried out. As discussed in the previous response, the Service purposefully uses an estimator for wind projects that is unlikely to underestimate take to avoid the severe negative consequences that brings. However, for wind projects under the AM process, over-mitigation can be confirmed and rectified when the initial take estimates for projects are adjusted with project-specific fatality data after the first five years of operation. At that time, permittees receive credit for any excess compensatory mitigation they have achieved, and those credits can be carried forward to offset future eagle take for that project. The Service intends to adopt the same approach for managing take for other activities.

Comment: The Service's CRM predicts unrealistically high rates of bald eagle fatalities at wind projects given the low number that have actually been reported. The Service needs to develop and use a separate fatality prediction model for bald eagles based on new species-specific data collected per the recommendations in the ECPG.

Comment: The Service recently released a draft Midwest Wind Multi-Species Habitat Conservation Plan for public comment. The draft HCP uses a version of the CRM to predict bald eagle impacts based on actual bald eagle data at wind energy facilities rather than solely relying on data from golden eagles and applying that data to bald eagles. The result is substantially different than the use of the Bayesian model based on golden eagle data and presents an assessment of bald eagle take that is both more realistic and more scientific than the proposed method. The Service should similarly here use data that is known to be specifically applicable to bald eagles. To that end, there are a number of ongoing studies and/or recently completed studies that could be used to provide a much better assessment of bald eagle risk and wind farms once they are made public.

Response: We are aware of arguments that the CRM predicts unreasonably high rates of bald eagle fatalities at wind facilities, however we have not received and had the opportunity

to carefully review data that is publicly available that actually confirms this. The Service does not disagree that bald eagles may prove to be less at risk from blade-strike mortality than golden eagles, but there are plausible reasons to expect that bald eagle fatality rates may be more variable than those for golden eagles, and under some conditions bald eagle collision probabilities may actually be higher. The reasons are: (1) bald eagles congregate in larger numbers than golden eagles, and while in those concentrations they engage in social behaviors that may increase their risk to blade strikes at a project sited in such an area; (2) in some of the areas where bald eagle congregate, there are multiple fatalities each year of bald eagles that fly into static power distribution lines and vehicles, suggesting that as a species they do not possess a superior ability to avoid collisions; and (3) a thorough study in Norway documented a substantial population-level negative effect of a wind facility there on a population of the closely related white-tailed eagle as a result of blade-strike mortality (Nygaard 2010). Also, as noted in response to other comments, possible overestimates of risk are likely to be a problem only for the first five years of operation as the initial fatality estimates for permits at wind facilities are intended to be updated with project-specific post-construction fatality data within that time. As noted in response to other comments that expressed frustration with perceived frequent updating of the Service's CRM, any such updates affecting the CRM for bald eagles would be made available in the form of a formal revision to Appendix D of the ECPG after the opportunity for notice and public comment.

Comment: A process should be developed by which data and reports associated with pre- and post-construction surveys can be made readily available and the prior distributions can be updated in a streamlined manner for real time application to inform management decisions.

Response: The proposed and final rule state that monitoring reports required under incidental eagle take permits will be available for public inspection. The Service will use the data to perform formal Bayesian updates of the CRM and to generate updated fatality predictions for each individual project at no less than 5-year intervals, and we will update the prior data for collision probability and eagle exposure in the national model a regular interval, dependent on the amount of new data that is available.

Comment: The proposed rule was focused on eagle breeding populations, however the eagles killed in wind resource areas are not necessarily participants in breeding populations at the times of their deaths.

Response: The proposed rule did not focus on breeding populations, and in fact one aspect of the proposal, to adopt Flyways rather than maintain the current EMUs, was introduced to better account for non-breeding season movements. The Service's population size estimates, sustainable take rate estimates, and take limits all apply to eagles across all age classes, both sexes, and throughout the year. Even the LAP analysis, which does focus heavily on breeding eagle densities, is not intended to only be protective of breeding populations, as explained in the Status Report on page 27.

Comment: Electric transmission and distribution related eagle mortality is vastly different than other forms of eagle mortality. These utility systems are complex, located in varied landscapes, and can extend hundreds of thousands of miles. Bald and golden eagles interact with transmission and distribution facilities in different ways. Performing surveys across the country and by utility would be challenging and provide varied results that may not be meaningful to the Service or the utility. Utilities have provided eagle and migratory bird mortality data to the Service for over a decade. Additional monitoring and mortality data seems redundant and problematic when this information has already been provided to the Service. The resources required for monitoring efforts could be better utilized by retrofitting high risk poles.

Response: In general, the Service agrees with this comment and will take these factors into consideration when developing pre-permitting data standards and terms and conditions for monitoring under permits for incidental take of eagles at electric transmission and distribution facilities and structures. Any such protocols would be made available for notice and public comment by the utility industry, environmental organizations, states, tribes, and other interested parties.

Comment: While permittee monitoring of the permitted activity is reasonable, the regulations should not place a burden on permittees to monitor "unpermitted take."

Response: The regulations do not ask permittees to monitor unpermitted take (except for take caused by the permitted activity that exceeds the take authorization). The Service compiles such information and uses the data in its LAP assessment, but this assessment does not require any information on unpermitted take be provided by the applicant.

Monitoring

Comment: The Service does not provide sufficient evidence that monitoring is an effective use of resources that actually confers conservation benefits to eagles. The high cost of monitoring is especially concerning given that the Service has not indicated that such a burden would actually further the purposes of the permit. Overly burdensome monitoring requirements discourage permit applications.

Response: Monitoring is among the most important and essential elements of the Service's eagle permitting program. The Service has acknowledged in these responses to comments and elsewhere (e.g., the ECPG, the proposed rule and PEIS) that considerable uncertainty exists in all aspects of the eagle permitting program, particularly with respect to the accuracy of models used to predict the effects of actions like the operation of wind turbines on eagles. The Service has followed DOI policy and designed the eagle permitting program within a formal AM framework, as described in response to other comments, in the preamble to the final rule, and in detail in Appendix A of the ECPG. Monitoring is an essential and fundamental element of adaptive management; it is absolutely necessary to reduce uncertainty and improve confidence in the permitting process; it is also essential to account for and provide credit to permittees who over-mitigate for their eagle take in the initial years of wind project operation. We will continue to require rigorous monitoring as a condition of all incidental take permits for which any uncertainty exists.

Comment: Based on a review of data collected for pre-construction eagle use surveys, little in the way of standardization actually exists among the use rate data that the proposed rule characterizes as the products of a standard protocol.

Response: We agree with this commenter that the ECPG, as non-binding guidance, has not resulted in the level of standardization that we had hoped. For that reason, we proposed incorporating key elements of the ECPG into the final rule by reference. Based on comments we received on this proposal, we have decided to instead include key language directly in the rule on pre-construction survey procedures and resulting data that will be required for eagle incidental take permit applications at wind facilities, and general guidance for other activities. We have not included similar requirements in the rule regarding post-construction fatality monitoring because these survey protocols are incorporated as binding terms and conditions of the incidental take permits. We added language to the preamble of the rule that explains why we believe this action will improve standardization of data collection.

Comment: The Service must not rely on any for-profit industry to monitor itself. Data obtained by third party monitors should be provided directly to the Service before or at the same time it is provided to project operators.

Comment: To the extent there are even benefits to using third party monitors, there are considerable costs to using them. Without a showing or evidence that observation and/or the reporting has been biased, it is unreasonably burdensome, arbitrary, and capricious to impose such costs.

Response: We agree with the large number of entities that urged the Service to require third-party monitoring for some permits. The final regulations require that for all permits with durations longer than 5 years, monitoring must be conducted by qualified, independent entities that are approved by the Service and report directly to the Service. "Approved by the Service" means the Regional Permit Office issuing the permit must approve and designate in writing the specific third-party monitor. In the case of permits of 5-year durations or shorter, such third party monitoring may be required on a case-by-case basis. With regard to the second comment, we do not agree that there will be significant additional costs imposed by the requirement for third-party monitoring. Most companies already rely on and pay for consultants to conduct project monitoring, presumably because it is more cost-effective than supporting those activities "in-house."

Comment: The Service should not codify any parts of the ECPG as that document needs to be a living document. To the extent that the Service does codify parts of the ECPG, at a minimum the entire document should be subject to further notice and comment.

Comment: The Service should provide a list of required data and estimates it needs to process an eagle incidental take permit request, rather than the methods by which they the data must be obtained. The feedback loops between data collection and analysis that the Service notes as rationale for requiring standardized methods are not dependent on collection methods, only on data types.

Response: In response to these and other comments, the Service has withdrawn the proposal to codify Appendices C and D of the ECPG. However, the AM process underpinning the entire eagle incidental take permit program cannot function credibly without standardized pre-construction site-specific eagle exposure data; we disagree with the second comment that the means by which the data are obtained do not matter for the AM process. Instead, the Service has incorporated minimum standards for such data for incidental take permits at wind facilities directly into the final rule, subject to waiver under exceptional circumstances. We also disagree with the suggestion that requiring these data standards necessitates additional notice and public comment. The rule language is restricted to key elements of Appendix C of the ECPG, which has gone through and been modified as a result of two rounds of public notice and comment, and the survey data requirements have been through two rounds of scientific peer review. These survey requirements should not be overly burdensome or unexpected because they were substantially modified after the first round of public comments on the ECPG to be largely compliant with the wind industry's existing voluntary standards for pre-construction eagle surveys. Moreover, these standards represent the minimum that the Service has specified as necessary to support an eagle incidental take permit application since 2013 (per the ECPG).

Comment: All wind farms should be outfitted with remote video cameras on wind turbines that can be viewed at all times by the public to aid enforcement of wildlife mortalities.

Response: The Service is unaware of data that shows that video cameras on wind turbines are an effective means for obtaining unbiased estimates of eagle fatality rates. We firmly support the exploration and development of such technology, however, and these regulations are flexible enough to allow for their incorporation into post-construction monitoring protocols when warranted.

Comment: The proposed rule states that Service biologists would " ... consider any available information on unpermitted take within the LAP area; evidence of excessive unpermitted take would be taken into consideration in evaluating whether to issue the permit," What would constitute "any available information?" Who would be responsible for determining whether there was "excessive unpermitted take?" How is "excessive" defined?

Response: The Service agrees that our estimates of unpermitted take are generally going to be speculative. There is only so much that can be done scientifically with anecdotal, incidental information, which characterizes most of the information that exists on unpermitted eagle take. However, the Service's proposal makes it very clear that we do intend to consider available information on unpermitted take as part of the LAP assessment. While the automatic trigger for additional analysis that could lead to a negative permit finding is a permitted take rate in excess of 5% of the estimated LAP, a high unpermitted take rate could also trigger the need for additional analysis and a negative finding with respect to permit issuance. For golden eagles we have identified that an unpermitted take rate in excess of 10% could be considered high; for bald eagles we have no scientific basis for establishing such a threshold. However, because unpermitted take is incompletely known and the degree of knowledge varies greatly from place to place, there will be few if any locations where unpermitted take can be accurately estimated, which means that in most cases the known unpermitted take will be greater than what is indicated by the available data. That is why the Service does not propose to set a hard limit on overall take, or on unpermitted take specifically. Instead, the Service will necessarily rely on best judgment to decide whether unpermitted take in any particular LAP is in excess of levels that would allow for additional take without risking extirpation of the LAP. Where data show that unauthorized take exceeds 10% of the LAP, if the incidental take permit is issued, the Service may require compensatory mitigation even if the EMU take threshold has not been exceeded. Finally, with respect to the burden on applicants, Service biologists will conduct the LAP analysis, and as such it will not trigger additional work for the permit applicant. To assist with the assessment of unpermitted take at the LAP scale, the Service has compiled and will continue to compile all available information from eagle necropsy reports, Office of Law Enforcement investigations, Special Purpose Use Permit reports, and other sources into a national database that will be queried by Service biologists using a spatial GIS tool as part of each LAP analysis. We have also established internal processes that will result in more dead eagles being necropsied (to provide information about cause of death) and included in the database.

Comment: Codification of the LAP cumulative effects analysis creates an economic burden on companies that have fewer resources.

Response: Actually, the LAP analysis will likely reduce costs for permits. First, the LAP cumulative effects analysis is a relatively simple exercise that is conducted by the Service, so no additional resources are required from the applicant to do the analysis other than what would be required otherwise. Second, in cases where the LAP analysis is conducted as analyzed in this PEIS, further project-specific NEPA analyses of the cumulative effects of the activity on eagles will not be necessary, thereby reducing overall costs for prospective permittees.

9. Explain any decision to provide any payment or gift to respondents, other than

remuneration of contractors or grantees.

We do not provide any payment or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality. Information collected on permit applications is subject to the Privacy Act and Freedom of Information Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

Pre-construction monitoring surveys, preparation of eagle conservation plan and post-construction monitoring:

We are estimating 15 responses each for pre-construction monitoring surveys, preparation of the permit application, which may include development of an eagle conservation plan, and post-construction monitoring. This includes 650 hours per response for pre-construction monitoring of eagle use of the project site, 200 hours completion time per response for the preparation of the eagle conservation plan, and 700 hours per response for post-construction monitoring. These burden hours only apply to those seeking a long-term eagle take permit. In addition, those that receive a permit are required to report take of eagles and threatened or endangered (T&E) species within 48 hours of discovery of the take. It is estimated that of the 15 projects permitted to take eagles, 10 will actually take eagles, requiring 2 hours to report. Take of Threatened or Endangered species is expected to be a rare event and only 1 of the 15 is expected to report this take, requiring 2 hours to report. This totals 23,304 annual burden hours.

Using the Bureau of Labor Statistics news release USDL-16-1808, September 8, 2016, Employer Costs for Employee Compensation — June 2016, we estimate the Employer costs for pre- and post-construction monitoring, preparation of an Eagle Conservation Plan and reporting take of eagles and T&E species to be:

Pre-construction monitoring: \$334,035 ($\$34.26 * 15 * 650$)
ECP preparation: \$102,780 ($\$34.26 * 15 * 200$)
Post-construction monitoring: \$359,730 ($\$34.26 * 15 * 700$)
Reporting take of Eagles \$685 ($\$34.26 * 2 * 10$)
Reporting take of Threatened or Endangered Species \$69 ($\$34.26 * 1 * 2$)

5-year permit review:

We are estimating 4 responses with a completion time of 8 hours for each response totaling 32 annual burden hours for the proposed 5-year permit review requirement. We will not collect this information or assess the \$8,000 administration fee until the permittee has had a permit for 5 years (earliest probably 2022). We estimate that, in the beginning, we will receive 19 responses over 5 years. This is annualized at 4 responses each year. After the initial 5-year period, we expect the number of responses to increase because of the continuing

increase in the number of permittees holding permits with a term of 5 years or longer.

The estimated dollar value of the annual burden hours to meet the proposed 5-year permit review requirement to be \$1,096 (rounded) ($\$34.26 * 4 * 8$).

The total annual burden hours associated with this rule are 23,304 hours and the total dollar value of the burden hours is \$798,395. Additional costs include the \$8,000 permit review fee which brings the total new costs associated with this information collection to \$830,395. See Tables 1 and 2 below.

All other burden for eagle take permits is approved under OMB Control No. 1018-0022.

Table 1. Estimated hour burden

Activity/Requirement	Annual Number of Responses	Average Completion Time Per Response	Total Annual Burden Hours	Cost/hour	\$ Value of Annual Burden Hours (rounded)
Pre-construction Monitoring Surveys	15	650 hours	9750 hours	\$34.26	\$334,035
Preparation of Eagle Conservation Plan	15	200 hours	3000 hours	\$34.26	\$102,780
Post Construction Monitoring	15	700 hours	10,500 hour	\$34.26	\$359,730
Reporting Take of Eagles	10	2 hours	20 hours	\$34.26	\$685
Reporting Take of Threatened & Endangered Species	1	2 hours	2 hours	\$34.26	\$69
§ 22.26(c)(7)(ii) - Permit reviews. At no more than 5 years from the date a permit that exceeds 5 years is issued, and every 5 years thereafter, the permittee compiles and submits to the Service, eagle fatality data or other pertinent information that is site-specific for the project. ⁹	4	8 hours	32 hours	\$34.26	\$1,096
Total	60	1562	23,304		\$798,395

Table 2. New Administrative Fee for 5-Year Permit Review

§ 22.26(c)(7)(ii) - Permit reviews.	See above for # of respondents			Proposed Fee per	Total Fee
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				Respondent	
				\$8,000	\$32,000

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

Table 3. Changes in fees for eagle take permits

Activity/Requirement	Existing Approval (1018-0022)	Current Fee	Proposed Fee	Total Approved Nonhour Burden Cost	Total Proposed Nonhour Burden Cost	Difference between 1018-0022 and proposed
3-200-71 - application, Eagle Incidental Take – (not programmatic or long-term) ¹	No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This rule revises fees and nonhour costs.	\$500 Non-commercial \$500 Commercial	\$500 Non-commercial \$2,500 Commercial	\$12,500 Non-commercial \$60,000 Commercial	\$12,500 Non-commercial \$300,000 Commercial	\$0 Non-commercial +\$240,000 Commercial
3-200-72 - application, Eagle Nest Take – single nest (formerly “standard”) ²	No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This rule revises fees and nonhour costs.	\$500 Non-commercial \$500 Commercial	\$500 Non-commercial \$2,500 Commercial	\$5,000 Non-commercial \$10,000 Commercial	\$5,000 Non-commercial \$50,000 Commercial	\$0 Non-commercial +\$40,000 Commercial
3-200-72—application, Eagle Nest Take – multiple nests (formerly “programmatic”) ³	No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This rule revises fees and nonhour costs.	\$1,000	\$500 – Non-commercial \$5,000 – Commercial	\$0 ³	\$500 Non-commercial \$40,000 Commercial	+\$500 Non-commercial +\$40,000 Commercial
3-200-71 Eagle Incidental Take Amendment -less than 5 years (formerly “standard”) ⁴	No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This rule revises fees and nonhour costs.	\$150 Non-commercial \$150 Commercial	\$150 – Non-commercial \$500 - Commercial	\$300 Non-commercial \$2,700 ⁵ Commercial	\$300 Non-commercial \$9,000 Commercial	\$0 Non-commercial +\$6,300 Commercial
3-200-72 Eagle Nest Take Amendment - “Single nest” (formerly “standard”) ⁴	No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This rule revises fees and nonhour costs.	\$150 Non-commercial \$150 Commercial	\$150 – Non-commercial \$500 – Commercial	\$150 Non-commercial \$600 ⁶ Commercial	\$150 Non-commercial \$2,000 Commercial	\$0 Non-commercial +\$1,400 Commercial
3-200-71 Amendment - Eagle Incidental Take Programmatic	No. of responses and annual burden hours approved under OMB Control No. 1018-0022	\$1,000 Commercial	No Fee ⁷	\$1,000 Commercial		- \$1,000 Commercial

TOTAL					\$92,250	\$451,450	\$327,200

¹ Approved under 1018-0022 – 145 annual responses (25 from individuals/households (homeowners) and 120 from the private sector (commercial) totaling 2,320 annual burden hours) (400 burden hours for individuals and 1,920 annual burden hours for private sector); \$500 permit fee for both individuals and private sector for a total nonhour burden cost of \$72,500. This rule changes the application fees: Homeowner fee would remain \$500; private sector fee (commercial) would increase to \$2,500. Total for 25 homeowners - \$12,500; Total for 125 commercial applicants - \$300,000).

² Approved under 1018-0022 (standard and programmatic permits were combined) – 30 responses (10 from Individuals/homeowners and 20 from private sector (commercial) totaling 480 burden hours (160 hours (individuals) and 320 hours (private sector). Homeowner fee would remain \$500; private sector fee (commercial) would increase to \$2,500. Total for 10 homeowners - \$5,000.; Total for 20 commercial applicants - \$50,000).

³ Approved under 1018-0022 (standard and programmatic permits were combined) – 9 responses (1 from Individuals/homeowners (non-commercial) and 8 from private sector (commercial) totaling 360 burden hours (40 hrs (individuals) and 320 hrs (private sector). The approved non-hour burden cost is \$0; however, that is an error. The permit application processing fee for programmatic nest take permits under the current regulations is \$1,000, so the total current burden cost should be \$9,000 (9 responses). Under this rule, the homeowner fee would increase to \$500; private sector fee (commercial) would increase to \$5,000. Total for 1 homeowner - \$500; total for 8 commercial - \$40,000.

⁴ The amendments for standard non-purposeful eagle take permits and standard eagle nest take permits are combined in the approved collection for a total of 25. Here they are split into 20 eagle incidental take permit amendments and 5 eagle nest take permit amendments.

⁵ Two Homeowner, Eighteen Commercial (private sector).

⁶ One Homeowner; Four Commercial (private sector).

⁷ The amendment fee for long-term programmatic permits is approved under 1018-0022. Under this rule, it is being removed because the costs associated with it would be included under the Administration Fee. See footnote 9.

⁸ ROCIS would not allow entering negative \$1,000 to account for the elimination of fees. Therefore, the cost shown in ROCIS in the ICR Summary of Burden table is \$1,000 more than the actual cost. We also address this in item 15 of this supporting statement.

⁹ This is a new reporting requirement as well as a new Administration Fee and applies only to Commercial permittees. We will not receive any reports or assess the Administration Fee until after a permittee has had a permit for 5 years (earliest probably 2022). We estimate that we will receive 19 responses every 5 years, annualized over the 3-year period of OMB approval results in 4 responses annually. We estimate that each response will take 8 hours, for a total of 32 annual burden hours. We will assess an \$8,000 administration fee for each permittee for a total of \$32,000. Note: this burden reflects what will be imposed in 5 years. Each 5 years thereafter, the burden and nonhour costs will increase because of the number of permittees holding 5-year or longer term permits.

We estimate \$830,395 of new hour and nonhour cost burden for administration fees, pre- and post-construction monitoring, preparation of an Eagle Conservation Plan, and reporting take of eagles and threatened and endangered species associated with changes in this proposed rule. This does not include the nonhour cost burden for eagle/eagle nest take permits approved under OMB Control No. 1018-0022 (\$92,250). States, local governments, and tribal governments are exempt from paying these fees. Therefore, we are reporting \$32,000 for a new administrative fee for a 5-year permit review plus \$327,200 in additional fees for a total of \$359,200 as the difference between the nonhour cost burden (fees) approved under 1018-

0022 and the changes in this final rule. Note that this amount differs by \$1,000 from the amount shown in the ICR Summary of Burden table in ROCIS because ROCIS would not allow entering negative \$1,000 to account for the elimination of the fee for the amendment for eagle incidental take (programmatic) – see table 3. We also address this in item 15 of this supporting statement

14. Provide estimates of annualized costs to the Federal Government.

We estimate the total cost to the Federal Government to administer information collection associated with all migratory bird permit applications and reports is \$3,079,473 (\$3,047,441 approved under OMB Control Number 1018-0022 (includes eagle take permits) and \$32,032 for this information collection).

We estimate that it will take 143 hours for Federal staff to review and process each 5-year permit. The total cost to the Federal Government to review and process information associated with 5-year permit reviews will be \$32,032 (143 x 4(permit reviews per year) x\$56 per hour). We propose to assess an \$8,000 administration fee to each permittee every 5 years to cover the cost of Federal staff to review and process the information.

Service biologists (GS-11/13) and permit examiners (GS-9/12), with support of GS-7 staff, will:

- Review and determine the adequacy of the information an applicant provides.
- Evaluate whether the permittee is meeting the terms and conditions of the permit.
- Update fatality predictions and make adjustments to compensatory mitigation, when required.
- Make reviews and monitoring data available to the public.
-

Permits are processed in our eight Regional Offices, which are located in major cities across the United States. We used Step 5 to account for difference in experience (i.e. less experience = step 1, while very experienced = step 10). We used the Office of Personnel Management Salary Table 2016-DCB for the Denver - Aurora area to determine average hourly wages. We multiplied the hourly rate by 1.6 to account for benefits.

The table below shows Federal staff and grade levels performing various tasks associated with this information collection.

POSITION/GRADE	HOURLY RATE	HOURLY RATE INCLUDING BENEFITS	TIME SPENT ON INFORMATION COLLECTION	WEIGHTED AVERAGE \$/HOUR
Clerical - GS-7/step 5 (Receptionist, Office Asst.)	\$23.72	\$37.95	5%	\$1.90
Legal documents examiner–GS-9/step 5 (Permit examiner)	29.02	46.43	30%	13.93
Legal documents examiner-GS-11/step 5 (Permit examiner)	35.11	56.18	30%	16.85
Biologist - GS-11/step 5	35.11	56.18	10%	5.62
Supervisor – GS-12/step 5 (Permit Chief)	42.08	67.33	20%	13.47
Management - GS-13/step 5 (Branch/Division Chief, Solicitor)	50.04	80.06	5%	4.00
Weighted Average (\$/hr)				\$56 (rounded)

15. Explain the reasons for any program changes or adjustments.

In Table 1, Item 12, we are reporting an additional 23,304 burden hours and \$798,395 in hour burden costs hours for pre- and post-construction monitoring, preparation of an eagle conservation plan, reporting take of eagles and Threatened and Endangered species, and 5-year permit reviews. We are also reporting \$32,000 in administration fees for the performance of a 5-year permit review. This burden was inadvertently left off the table in the proposed rule. We are proposing an additional \$327,200 in nonhour burden costs as program changes for this rule. The revisions to the nonhour burden costs are associated with proposed changes in fees. We will incorporate these fee changes into existing OMB Control Number 1018-0022 when we renew that control number in May 2017.

Also, note that the annual “cost burden \$” shown in the ICR Summary of Burden in ROCIS shows a cost of \$360,200. The actual cost is \$359,200. ROCIS would not allow entering a negative dollar amount of \$1,000 to account for the elimination of the fee associated with the amendment to Eagle Incidental Take (programmatic) as shown in the last entry in Table 3.

We made some revisions to the two forms associated with this information collection. We made minor changes to FWS Form 3-200-71 which are highlighted in the file uploaded in ROCIS. The most substantive change that was made to 3-200-71 was the revision of the fee schedule for eagle take. It was streamlined to only show Eagle Incidental Take – Long Term and Eagle Incidental Take – Short term.

We also revised FWS Form 3-200-72. The most substantive change was the revision of fee amounts that must be attached to the application. The changes are highlighted in the files uploaded in ROCIS.

Other than the additions mentioned above, all other burden (number of respondents and burden hours for eagle take permits are already approved under OMB Control Number 1018-0022. Since ROCIS will not allow an IC to be entered to alter a fee only, we had to include the current number of already approved respondents in those IC's in which the fees are changing. This will be corrected when we renew our existing OMC Control number 1018-0022 in May 2017.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We do not publish the results of these information collections.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.