

## Eagle Incidental Take Permit Questions and Answers

**Question:** When does required offsetting compensatory mitigation have to be accomplished?

**Answer:** Ideally all mitigation should be accomplished over the full term of the permit, with any detailed commitments specified in the terms and conditions of the permit. The Resource Equivalency Analysis (REA) used by the Service to determine mitigation requirements takes the timing of mitigation relative to the timing of take into account. The REA provides a discount for mitigation performed prior to the take occurring, and a penalty on mitigation performed after the take has occurred. Thus, it is to the permittee's advantage to perform the required mitigation before the take occurs if it is possible to do so.

Keywords: mitigation, REA, offset

**Question:** The initial fatality prediction for permits for eagle take at wind energy facilities is designed to purposely overestimate actual take, and yet all of this take is required to be offset through compensatory mitigation. Once the actual take for this initial phase of the permit is estimated (within at least five years of initial permit issuance), can any excess mitigation be carried forward to offset future take?

**Answer:** Yes, any compensatory mitigation carried out to offset the initial fatality prediction that is determined to be in excess of actual take<sup>1</sup> may be carried forward to offset future predicted take. If the mitigation was actually carried out during the initial phase of the permit, it will be credited as mitigation accomplished in advance of the actual take, which increases the 'value' attributed to it in the REA.

<sup>1</sup> mortalities estimated based on the number of eagle remains found during formal post-construction monitoring, corrected for observer detection probability, probability of carcass persistence, and search effort.

Keywords: mitigation, REA, offset

**Question:** If a permittee is implementing an experimental approach that is expected to reduce eagle fatalities below the collision risk model predicted number but the reduction cannot be quantified, can the take limit on the permit still be reduced by some amount to acknowledge the expected benefits?

**Answer:** No, if the Service has no credible way to estimate the expected reduction in take, we would have no defensible basis for reducing the take limit for the initial phase of the permit. The Service will therefore set the initial take limit without a reduction. In cases where there is reason to believe the initial take limit will greatly exceed the actual take, the Service and the permittee can agree to shorten the initial phase of the permit to 2, 3, or 4 years. In these cases the Service will use post-construction fatality data collected in the initial phase to update the fatality prediction. The new fatality rate will reflect any minimization benefits of the experimental approach and it will be used to predict take over the next phase of the permit. Over time, and with a number of facilities participating, the Service may be able to develop a collision prior for a specific minimization approach that can be used in the future for initial fatality estimates at sites using the technology.

Keywords: minimization, fatality estimate, CRM, collision risk

**Question:** If a permittee adopts an avoidance or minimization technology that will reduce fatalities by a known amount, can the difference between the unadjusted predicted number and the actual number of fatalities be considered compensatory mitigation?

**Answer:** Avoidance and minimization of take to the maximum degree practicable is a fundamental requirement of any eagle take permit, and reductions in take attributable to these measures are not considered compensatory mitigation. The one exception is for a project that was operating prior to 2009, the take for which is considered part of the biological baseline under the Eagle Rule. Any documented reduction in take from baseline levels can be considered compensatory mitigation in the sense it can be used to offset new take authorized subsequent to the baseline year.

Keywords: minimization, fatality estimate, CRM, collision risk

**Question:** If operational wind facilities must have a waiver in order to apply for an incidental take permit, is the waiver automatic for projects that were operational prior to January 17, 2017 (the effective date of the eagle incidental take rule revisions)? Does the Service memo constitute a waiver for projects that qualify?

**Answer:** The 2017 memorandum does not itself constitute the waiver for wind projects that were operational prior to January 17, 2017 because the regulations require the applicant to consult with and receive written concurrence from the Service that the waiver applies.

Keywords: waiver, operational