

Avian Power Line Interaction Committee



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Via email to: EaglePermitRegulation@fws.gov

September 4, 2007

Division of Migratory Bird Management
Attn: RIN 1018-AV11, Eliza Savage
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
MBSP-4107
Arlington, VA 22203

Re: RIN-1018-AV11 Authorizations Under the Bald and Golden Eagle Protection Act for Take of Eagles (*Federal Register*, Vol. 72, No. 107, June 5, 2007, pp. 31141-31155)

Dear Ms. Savage,

The Avian Power Line Interaction Committee (APLIC) is dedicated to the protection of avian resources while enhancing reliable energy delivery. APLIC is made up of over thirty utilities, Edison Electric Institute, National Rural Electric Cooperative Association, Electric Power Research Institute, and the US Fish and Wildlife Service. APLIC provided comments to the United States Fish and Wildlife Service (Service) on the proposed rule for delisting the bald eagle in the 48 contiguous states from the List of Endangered and Threatened Wildlife under the Endangered Species Act, suggested revisions to clarify conditions presented in the *Draft National Bald Eagle Management Guidelines*, and provided comments on the proposed definition of “disturb.” APLIC appreciates the opportunity to again provide comments on the Service’s proposed authorization for take of eagles under the Bald and Golden Eagle Protection Act (BGEPA).

APLIC supports the Service’s proposal to authorize take of bald and golden eagles under BGEPA, where such take is associated with otherwise lawful activities and conservation measures to avoid impacts are implemented. However, there are several points in the proposed rule that need clarification or additional information. It is unclear from the proposed rule if the proposed take

would be only for disturbance-related take or would apply to other forms of take, such as from power line electrocutions or collisions, or wind turbine strikes, etc. If take is authorized for “unavoidable” mortalities associated with the operation of electrical utility facilities (e.g. collisions, electrocutions), “conservation measures to mitigate impacts to eagles” could be achieved through the use of Best Management Practices (BMPs). For electric utilities specifically, this would be through the implementation of Avian Protection Plans modeled after the *Avian Protection Plan Guidelines* developed by the Service and the Avian Power Line Interaction Committee (APLIC) in 2005 and utilizing information contained in the 2006 edition of APLIC’s *Suggested Practices for Avian Protection on Power Lines*, as well as the 1994 edition of *Mitigating Bird Collisions With Power Lines*.

The proposed rule states that permits would be issued on “a limited basis.” Clarification is needed to identify if the number of permit holders would be limited, the number of eagles taken per permit would be limited, or both. APLIC recommends that exact numbers not be set across the board for individual take permits, rather, levels of take would be identified regionally based on local populations.

APLIC believes that the following questions need to be answered and additional clarification provided prior to finalizing this rule. The proposed rule states that three years of post-activity monitoring would be required as a permit condition. Would the Service provide guidance on methodology, would BMPs be used, and how would the Service ensure consistency across different regional or field offices? Likewise, the proposed rule states that “certain general conditions would be included in eagle take permits.” These conditions should be defined. The time period for a permit should also be identified, e.g., could this permit be issued for three to five year duration? If a utility has an existing Special Purpose Permit, could a take permit be authorized for same time period? Electric utilities that obtain a permit for eagle take may seek to reapply on an ongoing basis. If the utility is meeting its conservation goals identified in an Avian Protection Plan, would the Service consider permit reauthorizations?

The Federal Register proposes a permit to allow for the removal or relocation of eagle nests when there is a threat to public safety or to the eagles. APLIC agrees that a regulatory mechanism is needed for emergency situations. However, the description of the procedures for applying for a permit does not indicate a timeline for obtaining a permit. From the application description and submission requirements in the proposed rule, it could take several days to a week to obtain a permit. If a safety problem arises (e.g. a pole fire or power outage), a nest may have to be removed immediately to prevent risks to utility personnel, the public, and nesting birds. How would permits be issued in such cases? The proposed rule states that applications for emergency take of an eagle nest would be processed in 40 hours; however, the utility would likely need to take action immediately to address safety issues. If the situation is truly an emergency, this time period is not acceptable. The time it may take to obtain the permit should be

stated in the proposed rules. It should also describe a process that would allow for, and ensure, an expedited permit approval. Regarding take of eagle nests on or near electrical facilities, clarification is needed for the definition of a nest, and for the permitting process for immediate safety concerns. The length of time for which inactive eagle nests are protected should be included in the definition of an "eagle nest." Locations of all bird nests on transmission and distribution facilities may not be known due to large operational areas and annual changes in nest sites, which will make it difficult to accurately identify all eagle nest sites when applying for a permit.

APLIC feels that electric utilities that develop internal proactive avian protection programs that comply with the Avian Protection Plan Guidelines should be allowed to apply for permits that would authorize otherwise-occurring take of eagles due to power line electrocutions and collisions. A national process to issue take permits to electric utilities that have implemented Avian Protection Plans to minimize avian impacts would benefit eagles, raptors, and migratory birds of many species.

APLIC recommends that the Service continue its history of a collaborative working relationship with the electric utility industry to develop specific permit conditions for eagle take that the industry could support and implement while serving the underlying goal of eagle protection and safe, reliable and economical electrical service.

Sincerely,

A handwritten signature in cursive script that reads "Brad Loveless".

Brad Loveless
APLIC Chairman