



## Eagles

**Steve Black** <steve\_black@ios.doi.gov>

Fri, Mar 8, 2013 at 3:27 PM

To: David\_Hayes@ios.doi.gov, d\_m\_ashe@fws.gov, David\_Cottingham@fws.gov, betsy\_hildebrandt@fws.gov, Michael\_Bean@ios.doi.gov

Cc: janea\_scott@ios.doi.gov, Elizabeth\_Klein@ios.doi.gov

Monday will be 30 days since we met with stakeholders re the ANPR and tenure rule, etc. Depending on what you might have heard/seen, I think it would be useful to regroup, internally, sooner rather than later, to discuss next steps.

Thanks.

Steve



From: David Cottingham <david\_cottingham@fws.gov>

## Re: Eagles

David Cottingham <david\_cottingham@fws.gov>

Fri, Mar 8, 2013 at 6:48 PM

To: Steve Black <steve\_black@ios.doi.gov>

Cc: "David\_Hayes@ios.doi.gov" <David\_Hayes@ios.doi.gov>, "d\_m\_ashe@fws.gov" <d\_m\_ashe@fws.gov>, "betsy\_hildebrandt@fws.gov" <betsy\_hildebrandt@fws.gov>, "Michael\_Bean@ios.doi.gov" <Michael\_Bean@ios.doi.gov>, "janea\_scott@ios.doi.gov" <janea\_scott@ios.doi.gov>, "Elizabeth\_Klein@ios.doi.gov" <Elizabeth\_Klein@ios.doi.gov>

I've heard from both Julie Falkner and John Anderson that they believe they are making good progress toward coming up with suggestions for the department. I don't have any information on what their suggestions are.

David

David Cottingham  
202-208-4331 (office)  
202-372-7578 (cell)

On Mar 8, 2013, at 1:28 PM, Steve Black <steve\_black@ios.doi.gov> wrote:

- > Monday will be 30 days since we met with stakeholders re the ANPR and
- > tenure rule, etc. Depending on what you might have heard/seen, I think it
- > would be useful to regroup, internally, sooner rather than later, to
- > discuss next steps.
- >
- > Thanks.
- >
- > Steve

March 26, 2013

Briefing Memorandum for Deputy Secretary

From: Dan Ashe, Director

Subject: Meeting with environmental groups and wind industry, March 27, 2013

**Background**

You are meeting with representatives of wind industry and environmental groups that wrote to Secretary Salazar last summer regarding comments on the Service's ANPR to revise the 2009 eagle permitting rule and the proposed rule to extend the term of eagle take permits from 5 to up to 30 years.

At a meeting with many of these groups in February, they asked for an opportunity to collaborate on some ideas they were forming about how to improve the Service's eagle conservation programs. At this meeting, they will present the result of those discussions. They will likely ask that:

1. The Department/Service not promulgate a final rule extending the duration of eagle take permits up to 30 years.
2. The Department/Service create a science advisory committee to develop a research program at selected (a few) operating and proposed wind projects to test risk models, evaluate advanced conservation practices, and monitor projects for eagle behavior and mortality.
3. The Service and Justice provide assurances that project operators participating in the research program would not be prosecuted if they took an eagle.

You should also be aware that an environmental group who was not a signatory to the initial letter has asked that we not meet with this group again. They contend that doing so would violate the Federal Advisory Committee Act (see attached talking points).

**Service Comprehensive Eagle Conservation Program**

The Service appreciates the efforts of the wind industry and environmental groups to collaborate. However, we believe the time has come to move ahead with:

- 1.
- 2.
- 3.
- 4.
- 5.

(b) (5)

**Extend programmatic eagle take permits from 5 to 30 years – (b) (5)**

**Eagle Conservation Plan Guidance (version 2) – (b) (5)**

**Revising the 2009 Eagle Take Rule** – In April 2012 FWS published an Advanced Notice of Public Rule Making (ANPR) stating our intent to revise the 2009 eagle take rule and requesting comments and suggestions. Major points of concern that have been identified included:

1. How FWS should interpret the BGEPA preservation standard;
2. How FWS approaches the idea of “advanced conservation practices”;
3. Should assurances (i.e., cost caps, legal) can/should permittees receive;
4. Clarify the distinction between when Standard and Programmatic permits are needed/appropriate;
5. When should compensatory mitigation be required;
6. Are there ways to incentivize innovation in reducing take?

The Service has developed a plan to revise the 2009 rule. This strategy includes public input, tribal consultation, incorporating the products of our science and monitoring associated with the Eagle Conservation Plan Guidance, and the development of bald and golden eagle conservation plans. All of the above will provide a substantial and solid basis for the rule revision and the associated NEPA analysis. The anticipation of having a solid scientific basis for the substantive rule revision has been an integral part of the Service’s strategy. The Service, USGS, and other partners are seeking the right balance between the dual national objectives of developing renewable energy resources and protecting bald and golden eagles. However, the issues are biologically and legally complex, collecting the needed information takes time, and the costs of errors are not insignificant. Eagles are long-lived, slow reproducing birds, and excessive mortality, especially of adults, can have dramatic and long-lasting population consequences. For the responsible developer, errors in assessing risk can mean a project that takes eagles and therefore requires an eagle take permit faces loss of that permit, either through rescission because of unexpected incompatibility with the preservation standard of the Act or third-party legal action. The strategy outlined here is the Service’s best effort to make sure neither of these outcomes occurs.

**Research on eagle populations** – Much of the ongoing eagle research is specifically designed to decrease uncertainty as FWS revises the eagle take rule. For example:

1. Research aimed at improving estimates of golden eagle population size and trend will be directly incorporated into a re-assessment of sustainable take thresholds, and in setting revised numeric take thresholds.
2. Research aimed at re-assessing natal dispersal distance will provide more scientifically supportable boundaries for assessment of take at the local-area population scale, and for re-assessing geographic management units for both species of eagle.
3. Research into golden eagle survival rates will help improve estimates of survival that feed into the models that will be used to estimate sustainable take rates.
4. Developing an improved sustainable take model for eagles will be used in conjunction with revised population estimates for Golden Eagles and improved estimates of Golden Eagle Survival rates to set sustainable take limits at the scale of the eagle management unit and local-area population.
5. Research into eagle pre- and post-construction monitoring will help in the design of effective and efficient monitoring recommendations. This research is crucial to developing supportable, justifiable, and minimally burdensome monitoring protocols, which may be incorporated directly into regulation in the Eagle Permit rule revision.

**Research on Advanced Conservation Practices** -- Research to identify effective advanced conservation practices (ACPs) to reduce eagle fatalities at wind facilities is a high priority. One of the most expeditious and efficient ways to promote this research would be to develop and test experimental ACPs at operating wind facilities that have comparatively high eagle mortality rates. Because eagles would be taken as part of the research, facilities participating in such experiments should be operating under FWS permits that authorize eagle take. Research into experimental ACPs following such an approach is outlined and recommended in the draft ECPG. Wind facilities operating prior to 2009 could qualify for a programmatic eagle take permit if, among other things, they implemented measures that would reduce eagle takes from historic levels. Because of the requirement that take be reduced from historic, baseline levels, the take authorized by programmatic permits for activities that were ongoing prior to 2009 would not be subtracted from regional eagle take thresholds, and as such, they would not require compensatory mitigation to meet a no-net-loss standard (though mitigation may still be required under such permits). There are legal and law enforcement issues with this approach that need to be resolved.

**National Eagle Conservation-Management Plans** – The FWS will develop continental eagle conservation plans, including a re-assessment of the geographic boundaries of the regional eagle management units for both bald and golden eagles. These plans would recommend specific numeric population objectives for each management unit. The intent is that these population objectives would replace the current standard of maintaining stable numbers of breeding pairs of eagles. Depending on the geographic area and species, population objectives might be to maintain the current estimated population level, increase the population by a specific amount, or allow take that could decrease population size within constraints over time. The population objectives would need to be set so that existing or planned population monitoring programs could ascertain populations relative to objective levels.

## Talking Points for Deputy Secretary Hayes

### March 27 2013 Meeting with Wind Industry and Environmental Groups

- Thank you for all your efforts to work together and with the Service to improve our eagle conservation programs. We appreciate your efforts to share information among yourselves as you develop your thoughts in this important area.
- It's very important that we all work to learn more about and conserve eagle populations.
- When a number of us met in February, you asked for a little more time to develop your ideas about potential ways to move forward. We look forward to hearing from you on progress you've made. [John Anderson and/or Julie Falkner will likely speak for the group.]
- We also want to tell you where we are with regard to the Service's eagle conservation and research programs as well as modifying some of our eagle conservation and permitting processes.
- I should note that we are not in a position to request any consensus recommendations from you as a group, in light of the requirements of the Federal Advisory Committee Act – as we discussed in our last meeting. In fact, I understand that the Department has received one letter raising questions concerning these efforts and compliance with the Federal Advisory Committee Act.
- Of course, we are very interested in the information, expertise and perspectives that each of you brings individually to this important issue. We intend to give full consideration to all of your ideas as the Department moves ahead.
- Ask Dan Ashe [may be on the phone] or Steve Black if they want to add anything

Briefing Memorandum for Deputy Secretary

From: Dan Ashe, Director

Subject: Meeting with environmental groups and wind industry, March 27, 2013

## **Background**

You are meeting with representatives of wind industry and environmental groups that wrote to Secretary Salazar last summer regarding comments on the Service's ANPR to revise the 2009 eagle permitting rule and the proposed rule to extend the term of eagle take permits from 5 to up to 30 years.

At a meeting with many of these groups in February, they asked for an opportunity to collaborate on some ideas they were forming about how to improve the Service's eagle conservation programs. At this meeting, they will present the result of those discussions. They will likely ask that:

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3. The Service and Justice provide assurances that project operators participating in the research program would not be prosecuted if they took an eagle.

## **Service Comprehensive Eagle Conservation Program**

The Service appreciates the efforts of the wind industry and environmental groups to collaborate. However, we believe the time has come to move ahead with:

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**Extend programmatic eagle take permits from 5 to 30 years – (b) (5)**



(b) (5)

## **Eagle Conservation Plan Guidance (version 2) –**

**Revising the 2009 Eagle Take Rule** – In April 2012 FWS published an Advanced Notice of Public Rule Making (ANPR) stating our intent to revise the 2009 eagle take rule and requesting comments and suggestions. Major points of concern that have been identified included:

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**Research and how that can or will assist us** – Much of the ongoing eagle research is specifically designed to decrease uncertainty as FWS revises the Eagle Take rule. For example:

1. Research aimed at improving estimates of golden eagle population size and trend will be directly incorporated into a re-assessment of sustainable take thresholds, and in setting revised numeric take thresholds.



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## Talking Points for Deputy Secretary Hayes

March 27 2013 Meeting with Wind Industry and Environmental Groups

- Thank you for all your efforts to work together and with the Service to improve our eagle conservation programs. To have a situation where an industry and environmental groups are collaborating demonstrates the significance of finding creative solutions to these issues
- It's very important that we learn more about and conserve eagle populations
- When we met in February, you collectively asked for a little more time to develop some ideas about potential ways to move forward. We look forward to hearing from you on progress you've made. [John Anderson and/or Julie Falkner will likely speak for the group.]
- We also want to tell you where we are with regard to the Service's eagle conservation and research programs as well as modifying some of our eagle conservation and permitting processes.
- Ask Dan Ashe [need to confirm attendance] or Steve Black if they want to add anything



## industry position on permit term

Cottingham, David <david\_cottingham@fws.gov>

Mon, Nov 19, 2012 at 3:10 PM

To: "Ashe, D M" <D\_M\_Ashe@fws.gov>, Betsy Hildebrandt <betsy\_hildebrandt@fws.gov>, "Ford, Jerome" <jerome\_ford@fws.gov>, "Bean, Michael" <Michael\_Bean@ios.doi.gov>

Dan and all –

I spoke with John Anderson today regarding the term of eagle permits. To summarize our conversation, the industry ideally wants a 30-year permit with intermediate check-ins for projects. In the spirit of collaboration with the environmental community, AWEA is willing to go along with delaying our putting out a final rule extending the permit terms to 30 years because of strident opposition from NGOs. He expects to address the permit term as part of a discussion on the overall 2009 regulation. At that time, AWEA will push hard for a 30 permit with check-ins.

We will learn more as the discussions proceed.

DC



## Meeting with wind-enviro coalition

Cottingham, David <david\_cottingham@fws.gov>

Tue, Feb 19, 2013 at 2:25 PM

To: Dan Ashe <d\_m\_ashe@fws.gov>, Rowan Gould <r\_w\_gould@fws.gov>, Stephen Guertin <stephen\_guertin@fws.gov>, Jerome Ford <jerome\_ford@fws.gov>, Michael Bean <Michael\_Bean@ios.doi.gov>, Martha Williams <martha.williams@sol.doi.gov>, Mike Young <michael.young@sol.doi.gov>, Betsy Hildebrandt <betsy\_hildebrandt@fws.gov>  
Cc: Thomas Irwin <Thomas\_Irwin@fws.gov>, Roslyn Sellars <Roslyn\_Sellars@fws.gov>, David Cottingham <david\_cottingham@fws.gov>

Dan and all --

I got a call this morning from Julie Faulkner at Defenders. She is working with wind energy people to schedule a follow-up meeting from the Feb 11 session. They are planning to hold a meeting Friday, Mar 1, somewhere in DC to develop their proposed solution(s).

Julie specifically asked:

1. who from the Service/Department should attend?
2. are appropriate people from the Service/Department available to attend?
3. What role does the Service/Department want to play in the meeting, i.e., technical advisor?

I'm including Martha and Mike Young on this email. We need to include General Law FACA lawyers in the conversation as well.

I'm also attaching a letter from ABC asking that we cease meeting with the wind-enviro coalition for your information.

I've tentatively scheduled a meeting (subject to confirmation) for us to discuss Service/Department participation in this and what are sure to be follow-up meetings at **1:30 on Wednesday Feb 20.**

Thanks

DC

—  
David Cottingham  
Senior Advisor to the Director  
US Fish and Wildlife Service  
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Washington DC 20240

Office: 202-208-4331

Cell: 202-372-7578

**ABC\_Hayes\_eagle\_2-19-13 (1).pdf**  
227K

Went mtg w/ NCOs - industry.

Frances Bennoch

Tom Vanson

John

Jon Mock Shaper, At Rest.

National Energy

Chase Hunkley

Heleni Bode, AP&T

Steve Webster (phone)

Greg Whitstone

Julia Faulkner

Debbie Seare

John Anderson works on interim plan to completely  
supplants - permitting scheme.

John addresses projects according to 3 categories risk  
Bennoch says NCOs are ready to embrace John's  
interim plan.

NCOs are a support 30-year permit. She asks C  
30 days to work on John's interim plan.

Don

Vanson

(b) (5)

(b) (5)

Vanson

(b) (5)

Anderson says his concern is the NCOs are  
criticism by to determine to eagle take  
D unlikely

Jemie says F&S has 6 R room during  
30 day review.

Ward/Rooming

Julie Kunkin

Credit - creditable studies, conducted by Board  
Standard

suggests: distance education - to be implemented  
in 1st class, used at new & existing projects

John Anderson

suggests not supplanting - permit program  
to be implemented at present  
not a validated state assessment model  
→ validated effects

improvement direction - all possible continuity

NEAT Standard Act

Research, permits in 2000

Dan

(b) (5)

Hayes

(b) (5)

Archie was as long as permitted. Regard  
identity was accurately.

PTC expires at end of 2003.

Hayes

(b) (5)

Hayes

Hayes