

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

RIN 1018-AT94

Protection of Eagles; Definition of "Disturb"**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability: Final environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a Final Environmental Assessment (FEA) evaluating the possible effects of defining "disturb" under the Bald and Golden Eagle Protection Act (Eagle Act), and a Finding of No Significant Impact for the preferred alternative. We prepared the environmental assessment as part of the National Environmental Policy Act process. Based on public comments received on the draft environmental assessment (DEA) and proposed rule defining disturb, we modified the preferred alternative in the FEA, and have adopted the modified version of the preferred alternative as the final definition of "disturb" under the Eagle Act. The final rule codifying the definition of "disturb" is published elsewhere in today's **Federal Register**.

ADDRESSES: You may obtain a copy of this FEA by visiting our Web site at <http://www.fws.gov/migratorybirds/> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703-358-2329, or via e-mail at Eliza_Savage@fws.gov.

SUPPLEMENTARY INFORMATION:**Background**

On February 16, 2006, we published in the **Federal Register** a proposed rule (71 FR 8265) to define "disturb" under the Eagle Act (16 U.S.C. 668-668d). The proposed rule would add a definition for "disturb" to regulations at 50 CFR 22.3 in anticipation of possible removal (delisting) of the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (16 U.S.C. 1531 et seq.). If the bald eagle is delisted, the Eagle Act will become the primary law protecting bald eagles. The rule sought to define the term "disturb" in a manner consistent with the language and intent of the Eagle Act and thereby provide a predictable standard to guide bald eagle management following delisting. We opened a public

comment period on the proposed rule until May 17, 2006. On May 16, 2006, we published a notice extending the comment period until June 19, 2006 (71 FR 28294).

On December 12, 2006, we announced the availability of a DEA of our proposed definition of "disturb" through a notice in the **Federal Register** (71 FR 74483). In the DEA, we considered a definition slightly modified from the definition proposed in February 2006 as our preferred alternative. The definition was reworded for purposes of clarity, and included a definition of "injury," a term used in the definition of "disturb." During this round of public comment, we received 1,977 comments, approximately 1,875 of which were very similar. We considered all comments, and the definition of "disturb" we are codifying in our rulemaking (the preferred alternative of the FEA) is a modification of the definition we identified as our preferred alternative in the DEA. The final rule codifying the definition of "disturb" is published elsewhere in today's **Federal Register**.

In the FEA, under Alternative 1, we would not define "disturb." Disturbance would remain a prohibited act under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), without further regulatory interpretation. Under Alternative 2, the definition of "disturb" would be based on immediate effects to individual birds. We would define "disturb" as having a direct effect, as evinced by immediate behavioral response on the part of a bald eagle or a golden eagle, without consideration for secondary, biologically significant events. Alternative 4 would define "disturb" such that the disturbing action must be intentionally directed at eagles and cause injury or death. The preferred alternative (Alternative 3) defines "disturb" to encompass effects to individual birds that are likely to result in an adverse biological impact:

"Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

Dated: May 16, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****National Bald Eagle Management Guidelines****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability.

SUMMARY: This notice advises the public that National Bald Eagle Management Guidelines are available to the public.

ADDRESSES: Copies of the National Bald Eagle Management Guidelines can be obtained by writing to: Eliza Savage, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP-4107, Arlington, VA 22203. The guidelines may also be obtained via the Internet at: <http://www.fws.gov/migratorybirds/baldeagle.html>.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, (see **ADDRESSES** section); or via e-mail at: Eliza_Savage@fws.gov; telephone: (703) 358-2329; or facsimile: (703) 358-2217.

SUPPLEMENTARY INFORMATION: In anticipation of the possible removal of the bald eagle from the list of threatened species under the Endangered Species Act (16 U.S.C. 1531 et seq.), the Service has developed National Bald Eagle Management Guidelines to provide guidance to land managers, landowners, and others as to how to avoid disturbing bald eagles. After delisting, the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668-668d) becomes the primary law protecting bald eagles. The Eagle Act prohibits take of bald and golden eagles and provides a statutory definition of "take" that includes "disturb."

The Service developed National Bald Eagle Management Guidelines, a draft of which was made available for public comment February 16, 2006 (71 FR 8309). We received 86 comments on the guidelines, which we took into consideration in developing this final document. The guidelines provide the public information to help prevent disturbance of bald eagles and recommend additional non-binding practices that can benefit bald eagles.

In addition to this notice, the Service is publishing three related documents elsewhere in today's **Federal Register**: a final rule, codifying the Eagle Act definition of "disturb"; a notice of availability of the final environmental assessment for the definition of "disturb"; and a proposed rule to codify additional take authorizations under the Eagle Act.