

Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 (twelve) million or less. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

33. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

34. The Commission has, under SBA regulations, estimated the number of licensed NCE television stations to be 380. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

35. There are potential reporting or recordkeeping requirements proposed in this FNPRM. For example, any testing regime will entail some form of record keeping. The FNPRM also seeks comment on potential testing procedures for the CMAS that could affect CMS providers as well as Wireless Communications Equipment Manufacturers. The proposals set forth in the FNPRM are intended to advance the Commission's public safety mission and establish an effective CMAS in a manner that imposes minimal regulatory burdens on affected entities.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

37. As noted in paragraph 1 above, this FNPRM seeks comment on the narrow question of whether the Commission should require NCE and public broadcasting television licensees and permittees to test any equipment that they are required to install pursuant to section 602(c) of the WARN Act. In commenting on this question, commenters are invited to propose steps that the Commission may take to minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

38. None.

Ex Parte Rules

39. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that

memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Ordering Clauses

40. *It is ordered*, that pursuant to sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, this Further Notice of Proposed Rulemaking is hereby *adopted*.

41. *It is further ordered* that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Council for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

[FWS-R9-MB-2008-0057; 91200-1231-9BPP-L3]

RIN 1018-AV81

Eagle Permits; Take Necessary To Protect Interests in a Particular Locality

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (we or us), announce the availability of a draft environmental assessment (DEA) evaluating options for managing take of bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act). The DEA examines the effects of the action we proposed in a June 5, 2007 proposed rulemaking to establish two new permits under the Eagle Act (72 FR

31141), and two additional alternatives. We are soliciting current data regarding populations of both eagle species for the DEA. We are also seeking input regarding criteria to be used in quantifying take that occurs at important eagle-use areas, such as foraging areas, communal roost sites, or other concentration areas. Further, we are reopening the comment period on the proposed rule, which is the preferred alternative of the DEA. We have made some revisions and additions to the preferred alternative based on public comment received during the comment period on the proposed rule. Revisions of a substantive nature are noted in the Background section of this notice, and discussed more fully in the DEA.

DATES: Send your comments on the DEA and/or proposed rule by September 15, 2008.

ADDRESSES: We will post the DEA on <http://www.fws.gov/migratorybirds/>, or you may contact the Division of Migratory Birds Management at 4410 North Fairfax Drive, MS 4107, Arlington, VA 22203–1610. You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV81; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Diana Whittington, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–2010.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask

us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, 4th Floor, Arlington, VA 22203; telephone (703) 358–2010.

Background

On June 5, 2007, we published in the **Federal Register** a proposed rule (72 FR 31141) to provide certain authorizations to take bald eagles and golden eagles under the Eagle Act (16 U.S.C. 668–668d). The rule would establish a permit to authorize take that is associated with otherwise-lawful activities but which is not the purpose of the activity. In addition to authorizing the impacts of new activities, we proposed to use the new permit to extend Eagle Act take authorization to take previously exempted from the prohibitions of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) under ESA section 7. A second type of permit proposed in the rulemaking would authorize intentional take of eagle nests in rare cases where their location poses a risk to the public welfare or to the eagles themselves. Finally, the rule contained a proposed regulatory provision that would provide take authorization under the Eagle Act to ESA section 10 permittees who continue to operate in full compliance with the terms and conditions of their existing permits.

We are finalizing the proposed actions under two separate rulemakings. The authorizations associated with extending Eagle Act authorization to bald eagle take previously authorized under the ESA are categorically excluded from the requirement to prepare an environmental assessment under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347d) under Departmental procedures. In order to have those authorizations available at the earliest practical date, we have bifurcated the proposed rule. We are finalizing the ESA-related provisions ahead of the subject of the DEA we are releasing today, which is the remainder of the proposal.

We have prepared the DEA under NEPA to analyze alternatives associated with the two new permit regulations we proposed in June. In the DEA, we

considered three alternatives for managing take under the Eagle Act.

Under Alternative 1, we would finalize regulations to extend Eagle Act authorization to bald eagle take that is authorized under the ESA, but we would not promulgate the additional regulations we proposed to (1) authorize take that is associated with, but not the purpose of, an action, and (2) authorize nest removal to protect safety and public welfare. This is the “No Action” alternative because the only action that we would finalize is the one we would address in a separate rulemaking and is not subject to this environmental assessment.

Under Alternative 2, in addition to finalizing the actions described under Alternative 1, we would promulgate regulations for both of the proposed permits, but permits to authorize take that is associated with, but not the purpose of, an action would be limited to disturbance. No other forms of take would be authorized. We could authorize programmatic disturbance and nest take if the permittee implements advanced conservation practices (see discussion below).

Alternative 3 is the proposed action, with modifications, and the preferred alternative. Alternative 3 includes all elements of Alternative 2, with the addition that take that results in mortalities could also be authorized. Based on public comment received on the June 5, 2007, proposed rule, and on new information compiled through the process of drafting the DEA, we have made some modifications to the preferred alternative. In addition to a variety of minor revisions, Alternative 3 contains the following additions and changes to the proposed rule:

- As discussed above, we split the rule into two rules that we will finalize separately from one another. We separated the original proposal to extend (or “grandfather”) Eagle Act take authorization to take previously authorized under the ESA from the remainder of the provisions in order to finalize the “grandfathering” provisions more expeditiously.

- We modified our interpretation (provided in the June 5, 2007, proposed rule) of the statutory mandate that permitted take be “compatible with the preservation of the bald eagle or the golden eagle.” In the original proposal, we proposed to use the standard that regional and national eagle populations not decline at a rate greater than 0.54% annually. Our preferred alternative now requires increasing or stable regional populations to meet the “preservation” standard.

- The rule would include issuance criteria to ensure that, except for safety emergencies, Native American religious needs are given first priority if requests for permits exceed take thresholds that are compatible with the preservation of the bald eagle or the golden eagle.

- The rule would no longer provide different issuance criteria for lethal versus non-lethal take. Rather, it proposes separate provisions for programmatic take versus individual instances of take. Programmatic take (take that is recurring and not in a specific, identifiable timeframe and/or location) would be authorized only where it is unavoidable despite implementation of comprehensive measures ("advanced conservation practices") developed in cooperation with the Service to reduce the take below current levels. "Advanced conservation practices" refers to scientifically-supportable measures representing the best available techniques designed to reduce disturbance and ongoing mortalities to a level where remaining take is unavoidable.

- The rule would amend the existing eagle depredation permit regulations at 50 CFR 22.23 to extend permit tenure beyond 90 days for purposes of hazing eagles. The purpose of these revisions would be to enable issuance of permits that combine programmatic authorizations provided under § 22.23 and the new proposed take regulations (e.g., for airport safety purposes).

- The rule would expand (from the proposed rule) the purposes for which eagle nests may be taken to include where necessary to protect public health and welfare. The proposed rule limited nest removal to emergencies where human or eagle safety was imminently threatened. Nest removal for emergencies would be retained, and would authorize the removal and/or relocation of active and inactive nests where genuine safety concerns necessitate their removal. The broader application would allow us to issue permits to remove only inactive nests in some circumstances where the presence of the nest does not immediately threaten injury or loss of life, but does interfere with maintenance or expansion of infrastructure needed to protect overall public health and welfare. An example of the broader application would be a site in an underserved community where a new hospital is to be built, where the building was designed to avoid three eagle nests in a territory, but as construction is set to begin, eagles build a new nest in the only remaining available building site. In this situation (depending on

consideration of any other relevant factors), take of the nest may be considered necessary to protect public health and welfare, even though take is not necessary to alleviate an immediate safety threat.

In such situations, where the take of an inactive nest is necessary to protect public health and welfare, but not to alleviate an immediate threat to safety, two additional criteria must be met before we may issue a nest take permit under this section. First, we may not issue the permit unless alternative suitable nesting and foraging habitat is available. Second, the permittee will be required to mitigate for the detrimental impacts to eagles to the fullest extent practicable.

- We propose to redefine some terms and introduce new definitions for a number of additional terms used in the regulations, as follows:

We would define "eagle nest" as a "readily identifiable structure built, maintained, or used by bald eagles or golden eagles for breeding purposes." This definition is based on, and replaces, the existing golden eagle nest definition, in order to apply to both species. We would remove the existing definition of "golden eagle nest" from the list of definitions. Similarly, we would replace the old definition of "inactive nest" with a new definition that also includes bald eagles as well as golden eagles. The new definition would read: "a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the absence of any adult, egg, or dependent young at the nest for 10 consecutive days. An inactive nest may become active again and remains protected under the Eagle Act."

The proposed permit regulations under § 22.26 introduced the term "important eagle-use area" to refer to nests, biologically important foraging areas, and communal roosts, where eagles are potentially likely to be taken as the result of interference with breeding, feeding, or sheltering behaviors. We now propose to define "important eagle-use area" as "an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles." This term refers to the particular areas, within a broader area where human activity occurs, where eagles are more likely to be taken (e.g., disturbed) by the activity because of the higher probability of interference with

breeding, feeding, or sheltering behaviors at those areas.

We are also proposing to define terms used within the definition of "important eagle-use area." We would define "foraging area" to mean "an area where eagles regularly feed during one or more seasons." We would define "communal roost site" as "an area where eagles gather repeatedly in the course of a season and shelter overnight and sometimes during the day in the event of inclement weather." Not all foraging areas and communal roost sites are important enough that interfering with eagles at the site will cause disturbance (resulting in injury or nest abandonment.) Whether eagles rely on a particular foraging area or communal roost site to that degree will depend on a variety of circumstances, most obviously, the availability of alternate sites for feeding or sheltering.

"Territory" would be defined as "a defended area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles, and where no more than one pair breeds at a time."

"Cumulative effects" would mean "the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions."

We would define "indirect effects" as "effects that are caused by an action and which may occur later in time or be located beyond the initial impacts of the action, but are still reasonably foreseeable."

The preferred alternative continues to include the requirement that an applicant avoid and minimize impacts to eagles to the maximum extent practicable, and document the existing measures in their application for a permit. "Practicable" would be defined as "capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles, (1) the cost of remedy comparative with proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes."

An additional provision that would be included in the final rule to implement our preferred alternative pertains to the authorizations granted through the other final rulemaking (to extend Eagle Act authorization to take authorized under the ESA) that we separated from the action for which this environmental assessment is being carried out. Under the preferred alternative, the final regulations to establish a new permit for take of eagles where the take is associated with, but not the purpose of, the activity would include a provision that applies to anyone granted take

exemptions under section 7 of the ESA. This would apply in areas where the bald eagle remains listed or is re-listed under the ESA or if the golden eagle becomes listed. Of those persons, those who are issued their section 7 exemptions whose activities will also take eagles under the Eagle Act, and who wish to obtain Eagle Act authorization for that take, would be required to use the new permit regulations at 50 CFR 22.26 that are the subject of this DEA, once those regulations are available, rather than the expedited permit being established under separate regulations.

Authority: The authority for this action is the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

Dated: July 28, 2008.

Lyle Lavery,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–18779 Filed 8–13–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council proposes to amend the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP). If approved by the Secretary of Commerce, Amendment 13 to the Crustaceans FMP would designate deepwater shrimp of the genus *Heterocarpus* as management unit species, and require Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. Amendment 13 is intended to improve information on deepwater shrimp fisheries and their ecosystem impacts, and to provide a basis for future management of the fisheries, if needed.

DATES: Comments on Amendment 13, which includes an environmental

assessment, must be received by October 14, 2008.

ADDRESSES: Comments on the amendment, identified by 0648–AV29, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: Mail written comments to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 13, including an environmental assessment, are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This Federal Register document is accessible at the Office of the Federal Register website: www.gpoaccess.gov/fr.

Crustacean fisheries in the western Pacific are federally-managed within the waters of the U.S. Exclusive Economic Zone (EEZ) around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Hawaii, and the Pacific Remote Island Areas (PRIA, including Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll). The EEZ around the CNMI and PRIA extends from the shoreline seaward to 200 nautical miles (nm), and the EEZ around the other islands extends from three to 200 nm offshore. Crustaceans FMP management unit species now include spiny lobsters, *Panulirus marginatus* and *P. penicillatus*, slipper lobsters of the family Scyllaridae, and Kona (spanner) crab, *Ranina ranina*.

Eight species of *Heterocarpus* have been reported throughout the tropical Pacific. These shrimp are generally found at depths of 200 to 1,200 meters on the outer reef slopes that surround islands and deepwater banks. Species distribution tends to be stratified by depth with some overlap. The deepwater trap fisheries have primarily targeted *Heterocarpus ensifer* and *H. laevisgatus*.

Western Pacific commercial trap fisheries for deepwater shrimp are intermittent. There have been sporadic operations in Hawaii since the 1960s, small-scale fisheries in Guam during the 1970s, and some activity in the CNMI during the mid–1990s. The fisheries have been unregulated, and there has been no comprehensive collection of information about the fisheries. Most of these fishing ventures have been short-lived, probably as a result of sometimes-frequent loss of traps, a shrimp product with a short shelf life and history of inconsistent quality, and the rapid localized depletion of deepwater shrimp stocks leading to low catch rates. Despite these hurdles, interest in deepwater shrimp fisheries continues.

Amendment 13 would designate deepwater shrimp of the genus *Heterocarpus* as management unit species under the FMP, and would require Federal permits and reporting for deepwater shrimp fishing in the EEZ. The proposed monitoring program (permits and logbooks) is intended to improve understanding of these fisheries and their impact on marine ecosystems. Although currently there are no resource concerns regarding western Pacific deepwater shrimp, the proposed designation of these shrimp as management unit species would provide a basis for management of the fisheries, if warranted in the future. Amendment 13 designates Essential Fish Habitat (EFH) for the complete assemblage of adult and juvenile *Heterocarpus* spp. as the outer reef slopes between 300 and 700 meters surrounding every island and submerged banks in the western Pacific, and includes all eight species of deepwater shrimp in the region: *Heterocarpus ensifer*, *H. laevisgatus*, *H. sibogae*, *H. gibbosus*, *H. lepidus*, *H. dorsalis*, *H. tricarinatus* and *H. longirostris*, as required under the Magnuson-Stevens Fishery Conservation and Management Act.

Public comments on proposed Amendment 13 must be received by October 14, 2008 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the amendment has been prepared for Secretarial review and