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OF THE
UNITED STATES OF AMERICA

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October 29, 2021

VIA ELECTRONIC FILING

Jerome Ford
U.S. Fish and Wildlife Service
Falls Church, VA 22041

RE: Eagle Permits; Incidental Take; Advance Notice of Proposed Rulemaking, 86 Fed. Reg. 51094, September 14, 2021 [Docket No. FWS-HQ-MB-2020-0023]

Dear Mr. Ford:

The U.S. Chamber of Commerce (Chamber) appreciates the opportunity to comment on the U.S. Fish and Wildlife Service's (FWS) advance notice of proposed rulemaking for "Eagle Permits; Incidental Take"¹ under the Bald and Golden Eagle Protection Act. The Chamber recognizes the importance of eagle conservation and supports common sense permitting that recognizes the use of existing best practices and conservation programs and does not penalize industry with expanded fines or fees or the unwarranted threat of criminal penalties.

Avian conservation is important to businesses operating across industries. As detailed below, businesses have invested (and continue to invest) significant resources to develop and implement conservation practices, including the Avian Protection Plans (APP). Businesses have taken these steps voluntarily, with the goal of minimizing incidental impacts to eagles and other avian species. Encouraging industry to continue to engage in established conservation programs and implement best management practices (BMPs) to satisfy permitting requirements will lead to more immediate regulatory certainty and compliance.

The FWS should consider the potential impacts of any changes to its permitting program on the ability of the administration to build the infrastructure of the future needed to move the people, goods, energy, and information that make our economy go. Adding new restrictions or costs to the existing permitting program may contribute to delays in the massive infrastructure investments that Congress is currently considering. It will also slow down efforts to deploy clean energy infrastructure needed to meet the climate challenge. At the same time, streamlining and simplifying aspects of the existing permitting program may help facilitate such investments and efforts.

FWS should consider the following when considering expediting and simplifying its existing permitting program for the incidental take of eagles:

¹ Eagle Permits; Incidental Take, 86 Fed. Reg. 51094 (September 14, 2021)

1. Current Programs Are Supporting Eagles and Reducing Impacts

Regarding the conservation and protection of eagles, there are a multitude of current programs that support eagles and other birds through the conservation of habitat and other preventative measures. The energy sector, for example, working in collaboration with FWS, has invested significant resources to develop and implement voluntary guidelines to minimize the impacts of energy infrastructure on birds. The 2005 Avian Protection Plan (APP) Guidelines provide the most notable example of these programs:

- **APP Guidelines** for the electric power sector were developed through a collaborative process to ensure that utilities minimized adverse impacts to birds from power lines.² The guidelines provide examples and guiding principles that utilities can adapt to specific circumstances.

In addition to these voluntary efforts, numerous national and state programs as well as private-public partnerships provide conservation funding to help enhance or create new habitat for wildlife, including eagles. Below are a few of these programs that are designed to help create and enhance habitat for eagles, including:

- **America's Conservation Enhancement Act of 2020** reauthorized the North American Wetlands Conservation Act and the associated grant program to conserve wetlands for waterfowl and other birds. Over the last two decades, the program has funded over 3,000 projects totaling \$1.83 billion in grants, while more than 6,350 private and business partners contributed another \$3.75 billion in matching funds.³ Almost 30 million acres of bird habitat have been acquired, restored, or enhanced under the program.
- **The Great American Outdoors Act** will not only improve our national parks system but will also help protect eagles and other wildlife. Almost \$800 million in annual royalties from oil and gas revenues from production in the Gulf of Mexico could be directed to this conservation effort each year. The U.S. Chamber of Commerce strongly supported this legislation, issuing a Key Vote Letter to Congress stating that the Chamber would consider votes related to this legislation in our "How They Voted" congressional scorecard.⁴ We also worked collaboratively, issuing a joint statement of support, with the

² Avian Protection Plan (APP) Guidelines, Edison Electric Institute's Avian Power Line Interaction Committee and U.S. Fish and Wildlife Service, April 2005, https://www.aplic.org/uploads/files/2634/APPguidelines_final-draft_Aprl2005.pdf

³ North American Wetlands Conservation Act, Protecting, Restoring, and Enhancing Wetland Habitats for Birds, U.S. Fish and Wildlife Service, <https://www.fws.gov/birds/grants/north-american-wetland-conservation-act.php>

⁴ U.S. Chamber Key Vote Letter on S. 3422, the "Great American Outdoors Act," June 4, 2020, <https://www.uschamber.com/letters-congress/us-chamber-key-vote-letter-s-3422-the-great-american-outdoors-act>

National Audubon Society and The Pew Charitable Trusts to urge the Senate to pass this important conservation legislation.⁵

- **Farm Bills** provide incentives to private landowners to create conservation easements and partnership programs to improve millions of acres of wildlife habitat, including that of eagles. A key driver of conservation action for birds was the conservation title of the 2018 Farm Bill. The conservation title of the 2018 Farm Bill includes \$60 billion in projected mandatory spending on conservation over 10 years.⁶

The funding and other incentives in these federal programs help support eagles and other wildlife through the development, enhancement, and protection of their habitat. Such programs also demonstrate the United States' strong commitment to the protection of avian wildlife, including eagles. Coupling the funding provided through these conservation programs with voluntary guidelines adopted by industry will help minimize and often avoid impacts to eagles.

Other policy efforts, such as the Environmental Protection Agency's banning the use of the dichloro-diphenyl-trichloroethane (DDT) as a pesticide, contributed to the successful recovery of the bald eagle and its eventual delisting in 2007 from the Endangered Species Act list of threatened and endangered species.

2. Restructuring the Current Regulations, if Done Swiftly and Properly, Could Facilitate Efforts to Improve U.S. Infrastructure

We appreciate the FWS's interest in streamlining the process for permitting and would recommend that any such changes be affected swiftly and properly. Absent the requisite speed and appropriate criteria for permitting, restructuring the current permitting program could not only delay the implementation of any infrastructure program, including the President's plan, but delay any associated climate benefits that new, resilient infrastructure is intended to deliver. The Audubon Society stated in its report, "Audubon's Birds and Climate Change Report," that absent efforts to curb climate change, over 300 species of birds stand to lose significant portions of their ranges.⁷ To effectively and timely address the climate challenge and its associated impacts, infrastructure project sponsors need regulatory certainty. With such certainty, industry can rapidly deploy and develop significant new infrastructure while improving environmental outcomes.

Accordingly, we support the exploration of options for streamlining the permitting process for incidental take of eagles by establishing a "nationwide" or "general" permit program similar to the U.S. Army Corps of Engineers (USACE) Nationwide Permit Program (NWP program) for

⁵ National Audubon Society, The Pew Charitable Trusts and U.S. Chamber of Commerce Praise Enactment of the Great American Outdoors Act, August 4, 2020, <https://www.globalenergyinstitute.org/national-audubon-society-pew-charitable-trusts-and-us-chamber-commerce-urge-senate-passage-great>

⁶ Agricultural Conservation in the 2018 Farm Bill, Congressional Research Service, April 18, 2019, <https://crsreports.congress.gov/product/pdf/R/R45698#>.

⁷ Audubon's Birds and Climate Change Report (2015), http://climate.audubon.org/sites/default/files/NAS_EXTBIRD_V1.3_9.2.15%20lb.pdf

authorizing impacts to wetlands and other waters of the United States. Such a program may be capable of appropriately expediting or even eliminating review of proposed activities with only minimal adverse environmental effects, thus focusing government and private-sector resources on the subset of activities that may have more serious impacts. At the same time, we note that any new permitting provisions must not be so complex or burdensome as to negate the benefits of the new program. Any general permits should incorporate insights from best management practices that industry stakeholders are already implementing. They should not impose new, burdensome regulatory responsibilities, including monitoring or surveying duties, that would deter participation in a permit program or introduce new liabilities or uncertainties for regulated parties. Ensuring feasibility and workability for persons and businesses eligible for participation will be key to the effectiveness and durability of any changes to the existing permitting program.

3. Any Fee Structure or Enforcement Practices Associated with New Permitting Provisions Should be Reasonable and Limited in Scope

Although the advanced notice of proposed rulemaking does not discuss possible new fees or enforcement issues in detail, it bears emphasis, as a general matter, that any new fees to be considered in the future must be limited and reasonable in nature. The same is true of enforcement efforts. Costly permits and fines have the potential to further weaken certain industries - including the renewable energy sector - at a time when they are attempting to recover from the recent COVID-19 crisis and economic downturn. Increased fees and fines could leave a business with less resources to pursue its conservation, climate, and infrastructure goals, and could overly deter private-sector activities that would benefit the environment and the economy. Enforcement of any permitting rules must similarly be reasonable, targeted, and predictable, so as to protect species without placing an undue burden on companies that are voluntarily implementing BMPs and working with the FWS to advance conservation efforts.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin J. Durbin". The signature is fluid and cursive, with a large initial "M" and a distinct "D".

Martin J. Durbin
Senior Vice President
U.S. Chamber of Commerce