



Billing Code 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS-HQ-LE-2018-0078; FF09L00200-FX-LE18110900000]

Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act; Religious Use of Feathers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Petition for rulemaking; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received a petition for rulemaking, which asks the Service to revise the existing rules pertaining to the religious use of federally protected bird feathers. The petition is being published pursuant to the terms of a settlement agreement entered into in 2016 by the United States with McAllen Grace Brethren Church and the Becket Fund for Religious Liberty. Any changes to existing rules will be subject to a public comment period, and tribal consultation consistent with Executive Order 13175 and the Department of the Interior Policy on Consultation with Indian Tribes. The Service seeks comments on the petition.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Document availability:* The petition and other materials mentioned in this document are available on the internet at <http://www.regulations.gov> in Docket No. FWS-HQ-LE-2018-0078. To review these materials in person, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Comment submission: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–HQ–LE–2018–0078.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–LE–2018–0078; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.

See **Public Comments** below for additional information.

FOR FURTHER INFORMATION CONTACT: Edward Grace, Assistant Director, U.S. Fish and Wildlife Service, Office of Law Enforcement, edward_grace@fws.gov, (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2018, the Service received a petition for rulemaking from Pastor Robert Soto, the lead plaintiff in *McAllen Grace Brethren Church v. Jewell*, No. 7:07-cv-060 (S.D. Tex. June 3, 2016) (hereinafter “*McAllen*”), and the Becket Fund for Religious Liberty, asking the Service to revise its existing rules pertaining to the religious use of federally protected bird feathers and parts for Native Americans. The petitioners submitted the petition pursuant to paragraph 7 of the June 10, 2016, settlement agreement between the *McAllen* Plaintiffs and the United States, which states:

[The Secretary of the United States Department of the Interior (“Secretary”)]
agrees to consider a petition under 43 CFR § 14.2 from Plaintiffs to modify
existing regulations or issue new regulations concerning the possession of eagle
feathers by persons who are not members of federally recognized tribes. In
considering the Petition, [the Secretary] agrees to issue a notice in the Federal

Register requesting public comment on the petition. [The Secretary] agrees to make a decision on the petition within two years from the date it is received.

Petitioned Actions

The petition provides proposed regulatory text, which more broadly asks the Service to do four things:

(1) “*Criminal possession ban*: Petitioners propose that the Department [of the Interior] promulgate the Morton Policy as a regulation, with one modification: that the policy apply to all sincere religious believers who use federally protected feathers in their religious exercise.” The “Morton Policy” is a Department of Justice enforcement policy that generally advises against prosecuting members of Federally Recognized Tribes who possess, travel with, or acquire or transfer without compensation eagle feathers. A Department of Justice memorandum concerning its application of the Morton Policy to Federally Recognized Tribes and a related 1975 press release by Secretary of the Interior Rogers C.B. Morton are available as indicated above in

ADDRESSES.

(2) “*Protect Sincere Religious Believers*: Members of a state or federally recognized Indian tribe, a Native American church, or other Native American religious organization should enjoy a presumption of sincerity; others should have the opportunity to demonstrate their sincerity in other ways.”

(3) “*National Eagle Repository*: The Department should reform the Repository by increasing its funding and staffing, working more closely with tribes and other stakeholders to improve efficiency, and adopting policies that will expand the overall supply of feathers. This will enable the Repository to better serve all sincere religious believers who use eagle feathers in their religious exercise.” Note that the draft regulatory language suggested by the petitioners

specifically requests access to the Repository for all sincere religious believers. (See paragraph d. of the petitioned regulatory text, pp. 44–45 of the petition).

(4) “*Combat commercialization and increase enforcement*: Petitioners propose that the Department [of the Interior] engage in government-to-government consultations with federally recognized tribes on specific measures to help Native Americans detect and report suspected illegal commercial activities involving protected feathers.” (See pp. 3–4 of the petition).

Note that some of these requests are for administrative action and are not directly addressed in the regulatory language the petitioners propose. The petitioners’ proposed regulatory text can be found on pp. 44–45 of the petition, available at <http://www.regulations.gov> in Docket No. FWS–HQ–LE–2018–0078.

Public Comments

You may obtain the petition for rulemaking, and you must submit your comments and materials concerning this petition, by one of the methods described in **ADDRESSES**. The Service will not consider the petition’s merits until after the comment period ends on the date set forth in **DATES**. If the Service decides that the petition has merit, we may begin a rulemaking proceeding. The Service will announce any action that we decide to take in the *Federal Register*.

We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top

of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that all comments that we receive are publicly available, we will post all hardcopy comments on [http:// www.regulations.gov](http://www.regulations.gov).

Administrative Procedure Act

Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The petition will be given prompt consideration, and the petitioner will be notified promptly of action taken. A petition for rulemaking may be published in the *Federal Register* if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

Dated: March 25, 2019

Andrea Travnicek
Principal Deputy Assistant Secretary
Exercising the Authority of the Assistant Secretary
for Fish and Wildlife and Parks.
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