

# ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR Data is current as of February 20, 2014**

Title 50: Wildlife and Fisheries

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## **PART 22—EAGLE PERMITS**

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AUTHORITY: 16 U.S.C. 668-668d; 16 U.S.C. 703-712; 16 U.S.C. 1531-1544.

SOURCE: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

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## Subpart A—Introduction

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### §22.1 What is the purpose of this part?

This part controls the taking, possession, and transportation within the United States of bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) and their parts, nests, and eggs for scientific, educational, and depredation control purposes; for the religious purposes of American Indian tribes; and to protect other interests in a particular locality. This part also governs the transportation into or out of the United States of bald and golden eagle parts for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, trade, or barter of bald and golden eagles, or their parts, nests, or eggs is prohibited.

[64 FR 50472, Sept. 17, 1999, as amended at 73 FR 29083, May 20, 2008]

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### §22.2 What activities does this part apply to?

(a)(1) You can possess or transport within the United States, without a Federal permit:

(i) Any live or dead bald eagles, or their parts, nests, or eggs that were lawfully acquired before June 8, 1940; and

(ii) Any live or dead golden eagles, or their parts, nests, or eggs that were lawfully acquired before October 24, 1962.

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald or golden eagles, or their parts, nests, or eggs of these lawfully acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired dead bald or golden eagles, their parts, nests, or dead eagles, if you acquire a permit

issued under §22.22 of this part.

(3) No exemption from any statute or regulation will apply to any offspring of these pre-act birds.

(4) You must mark all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs as directed in §14.81 of this subchapter. The markings must contain the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the number of each species.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also part 13 of this subchapter).

[39 FR 1183, Jan. 4, 1974, as amended at 64 FR 50472, Sept. 17, 1999]

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### **§22.3 Definitions.**

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part 22:

*Advanced conservation practices* means scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.

*Area nesting population* means the number of pairs of golden eagles known to have a resting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

*Communal roost site* means 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.

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

*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.

*Eagle nest* means any readily identifiable structure built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction.

*Export* for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs out of the United States when accompanied with a valid transportation permit.

*Foraging area* means an area where eagles regularly feed during one or more seasons.

*Import* for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs into the United States when accompanied with a valid transportation permit.

*Important eagle-use area* means 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.

*Inactive nest* means a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present. An inactive nest may become active again and remains protected under the Eagle Act.

*Indirect effects* means effects for which a proposed action is a cause, and which may occur later in time and/or be physically manifested beyond the initial impacts of the action, but are still reasonably likely to occur.

*Maximum degree achievable* means the standard at which any take that occurs is unavoidable despite implementation of advanced conservation practices.

*Necessary to ensure public health and safety* means required to maintain society's well-being in matters of health and safety.

*Nesting attempt* means any activity by golden eagles involving egg laying and incubation as determined by the presence of an egg attended by an adult, an adult in incubation posture, or other evidence indicating recent use of a golden eagle nest for incubation of eggs or rearing of young.

*Person* means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of any State or political subdivision of a State.

*Practicable* means capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles, the following three things: the cost of remedy compared to proponent resources; existing technology; and logistics in light of overall project purposes.

*Programmatic permit* means a permit that authorizes programmatic take. A programmatic permit can cover other take in addition to programmatic take.

*Programmatic take* means take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.

*Resource development or recovery* includes, but is not limited to, mining, timbering, extracting oil, natural gas and geothermal energy, construction of roads, dams, reservoirs, power plants, power transmission lines, and pipelines, as well as facilities and access routes essential to these operations, and reclamation following any of these operations.

*Safety emergency* means a situation that necessitates immediate action to alleviate a threat of bodily harm to humans or eagles.

*Take* means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.

*Territory* means an area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles.

*Transportation into or out of the United States* for the purpose of this part means that the permitted item or items transported into or out of the United States do not change ownership at any time, they are not transferred from one person to another in the pursuit of gain or profit, and they are transported into or out of the United States for Indian religious purposes, or for scientific or exhibition purposes under the conditions and during the time period specified on a transportation permit for the items.

[39 FR 1183, Jan. 4, 1974, as amended at 48 FR 57300, Dec. 29, 1983; 64 FR 50472, Sept. 17, 1999; 72 FR 31139, June 5, 2007; 74 FR 46876, Sept. 11, 2009]

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## **§22.4 Information collection requirements.**

(a) The Office of Management and Budget approved the information collection requirements contained in this part 22 under 44 U.S.C. 3507 and assigned OMB Control Number 1018-0022 and 1018-0136. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information necessary to evaluate permit applications. We will use this information to review permit applications and make decisions, according to criteria established in the Bald and Golden Eagle Protection Act and its regulations, on the issuance, suspension, revocation, or denial of permits. You must respond to obtain or retain a permit.

(b) Direct comments regarding any aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0022 and 1018-0136), Washington, DC 20603.

[63 FR 52637, Oct. 1, 1998, as amended at 74 FR 46876, Sept. 11, 2009]

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## Subpart B—General Requirements

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### §22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, 50 CFR part 13, 50 CFR part 17, and/or 50 CFR part 21 as provided by §21.2, or authorized under a depredation order issued under subpart D of this part. We will accept a single application for a permit under this part and any other parts of this subchapter B if it includes all of the information required for an application under each applicable part.

(a) A permit that covers take of bald eagles or golden eagles under 50 CFR part 17 for purposes of providing prospective or current ESA authorization constitutes a valid permit issued under this part for any take authorized under the permit issued under part 17 as long as the permittee is in full compliance with the terms and conditions of the permit issued under part 17. The provisions of part 17 that originally applied will apply for purposes of the Eagle Act authorization, except that the criterion for revocation of the permit is that the activity is incompatible with the preservation of the bald eagle or the golden eagle rather than inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv).

(b) You do not need a permit under parts 17 and 21 of this subchapter B for any activity permitted under this part 22 with respect to bald or golden eagles or their parts, nests, or eggs.

(c) You must obtain a permit under part 21 of this subchapter for any activity that also involves migratory birds other than bald and golden eagles, and a permit under part 17 of this subchapter for any activity that also involves threatened or endangered species other than the bald eagle.

(d) If you are transporting dead bald or golden eagles, or their parts, nests, or dead eggs into or out of the United States, you will also need a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permit under part 23 of this subchapter.

[64 FR 50472, Sept. 17, 1999, as amended at 68 FR 61140, Oct. 27, 2003; 73 FR 29083, May 20, 2008]

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## §22.12 What activities are illegal?

(a) You may not sell, purchase, barter, trade, import, or export, or offer for sale, purchase, barter, or trade, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of these birds, and we will not issue a permit to authorize these acts.

(b) You may not transport into or out of the United States any *live* bald or golden eagle, or any *live* egg of those birds, and we will not issue a permit to authorize these acts.

[64 FR 50472, Sept. 17, 1999]

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## Subpart C—Eagle Permits

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### §22.21 What are the requirements concerning scientific and exhibition purpose permits?

We may, under the provisions of this section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any live eggs of these birds.

(a) *How do I apply if I want a permit for scientific and exhibition purposes?* (1) You must submit applications for permits to take, possess, or transport within the United States lawfully acquired live or dead bald or golden eagles, or their parts, nests, or live or dead eggs for scientific or exhibition purposes to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2.

(2) If you want a permit to *transport into or out of the United States* any lawfully acquired dead bald or golden eagles or their parts, nests, or dead eggs for scientific or exhibition purposes, you must submit your application to the Office of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the

requirements in part 23 of this subchapter before international travel. Mail should be addressed to: Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA, 22203.

(3) Your application for any permit under this section must also contain the information required under this section, §13.12(a) of this subchapter, and the following information:

(i) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

(ii) Specific locality in which taking is proposed, if any;

(iii) Method taking proposed, if any;

(iv) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

(v) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended;

(vi) Complete explanation and justification of request, nature of project or study, number of specimens now at institution, reason these are inadequate, and other appropriate explanations.

(b) *What are the conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific or exhibition purposes, are also subject to the following condition: In addition to any reporting requirement specifically noted in the permit, you must submit a report of activities conducted under the permit to the Regional Director—Attention: Migratory Bird Permit Office, within 30 days after the permit expires.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will only issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific or exhibition purposes when we determine that the taking, possession, or transportation is compatible with the preservation of the bald eagle and golden eagle. In making this determination, we will consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;



(3) Whether the justification of the purpose for which the permit is being requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for *bona fide* scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(d) *Tenure of permits.* The tenure of permits to take bald or golden eagles for scientific or exhibition purposes shall be that shown on the face of the permit.

[39 FR 1183, Jan. 4, 1974, as amended at 63 FR 52638, Oct. 1, 1998; 64 FR 50472, Sept. 17, 1999]

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## **§22.22 What are the requirements concerning permits for Indian religious purposes?**

We will issue a permit only to members of Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs listed under 25 U.S.C. 479a-1 engaged in religious activities who satisfy all the issuance criteria of this section. We may, under the provisions of this section, issue a permit authorizing the taking, possession, and transportation within the United States, or transportation into or out of the United States of lawfully acquired bald eagles or golden eagles, or their parts, nests, or eggs for Indian religious use. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any *live* bald or golden eagles, or any *live* eggs of these birds.

(a) *How do I apply if I want a permit for Indian religious purposes?* You must submit applications for permits to take, possess, transport within the United States, or transport into or out of the United States lawfully acquired bald or golden eagles, or their parts, nests, or eggs for Indian religious use to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. If you are applying for a permit to *transport into or out of the United States*, your application must contain all the information necessary for the issuance of a CITES permit. You must comply with all the requirements in part 23 of this subchapter before international travel. Your application for any permit under this section must also contain the information required under this section, §13.12(a) of this subchapter, and the following information:

(1) Species and number of eagles or feathers proposed to be taken, or acquired by gift or inheritance.

(2) State and local area where the taking is proposed to be done, or from whom acquired.

(3) Name of tribe with which applicant is associated.

(4) Name of tribal religious ceremony(ies) for which required.

(5) You must attach a certification of enrollment in an Indian tribe that is federally recognized under the Federally Recognized Tribal List Act of 1994, 25 U.S.C. 479a-1, 108 Stat. 4791 (1994). The certificate must be signed by the tribal official who is authorized to certify that an individual is a duly enrolled member of that tribe, and must include the official title of that certifying official.

(b) *What are the permit conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests or eggs for Indian religious use are subject to the following conditions:

(1) Bald or golden eagles or their parts possessed under permits issued pursuant to this section are not transferable, except such birds or their parts may be handed down from generation to generation or from one Indian to another in accordance with tribal or religious customs; and

(2) You must submit reports or inventories, including photographs, of eagle feathers or parts on hand as requested by the issuing office.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will only issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests or eggs, for Indian religious use when we determine that the taking, possession, or transportation is compatible with the preservation of the bald and golden eagle. In making a determination, we will consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald or golden eagles; and

(2) Whether the applicant is an Indian who is authorized to participate in *bona fide* tribal religious ceremonies.

(d) *How long are the permits valid?* We are authorized to amend, suspend, or revoke any permit that is issued under this section (see §§13.23, 13.27, and 13.28 of this subchapter).

(1) A permit issued to you that authorizes you to take bald or golden eagles will be valid during the period specified on the face of the permit, but will not be longer than 1 year from the date it is issued.

(2) A permit issued to you that authorizes you to transport and possess bald or golden eagles or their parts, nests, or eggs within the United States will be valid for your lifetime.

(3) A permit authorizing you to transport dead bald eagles or golden eagles, or their parts, nests, or dead eggs into or out of the United States can be used for multiple trips to or from the United States,

but no trip can be longer than 180 days. The permit will be valid during the period specified on the face of the permit, not to exceed 3 years from the date it is issued.

[39 FR 1183, Jan. 4, 1974, as amended at 63 FR 52638, Oct. 1, 1998; 64 FR 50473, Sept. 17, 1999]

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### **§22.23 What are the requirements for permits to take depredating eagles and eagles that pose a risk to human or eagle health and safety?**

(a) *How do I apply for a permit?* You must submit applications for permits under this section to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. Your application must contain the information and certification required by §13.12(a) of this subchapter, and the following additional information:

- (1) Species and number of eagles proposed to be taken;
- (2) Location and description of property where taking is proposed;
- (3) Inclusive dates for which permit is requested;
- (4) Method of taking proposed;
- (5) Kind and number of livestock or domestic animals owned by applicant, if applicable;
- (6) Kind and amount of alleged damage, or description of the risk posed to human health and safety or eagles; and
- (7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

(b) *What are the permit conditions?* In addition to the general conditions set forth in part 13 of this subchapter B, permits to take bald or golden eagles under this section are subject to the following conditions:

- (1) Bald or golden eagles may be taken under permit by firearms, traps, or other suitable means except by poison or from aircraft;
- (2) The taking of eagles under permit may be done only by the permittee or his agents named in the permit;
- (3) Any eagle taken under authority of such permit will be promptly turned over to a Service agent

or other game law enforcement officer designated in the permit; and

(4) In addition to any reporting requirement on a permit, you must submit a report of activities conducted under the permit to the appropriate Regional Director—Attention: Migratory Bird Permit Office within 10 days following completion of the taking operations or the expiration of the permit, whichever occurs first.

(c) *Issuance criteria.* The Director will not issue a permit to take bald or golden eagles unless the Director has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination, the Director will consider the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild population of bald or golden eagles;

(2) Whether evidence shows that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit and the injury complained of is substantial, or that bald or golden eagles pose a significant risk to human or eagle health and safety; and

(3) Whether the only way to abate or prevent the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) *Tenure of permits.* The tenure of any permit to take bald or golden eagles under this section is that shown on the face of the permit. We will not issue these permits for terms longer than 90 days, except that permits to authorize disturbance associated with hazing eagles from the vicinity may be valid for up to 5 years. We may amend, suspend, or revoke permits issued for a period of longer than 90 days if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations.

[39 FR 1183, Jan. 4, 1974, as amended at 63 FR 52638, Oct. 1, 1998; 64 FR 50473, Sept. 17, 1999; 74 FR 46876, Sept. 11, 2009]

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## **§22.24 Permits for falconry purposes.**

(a) *Use of golden eagles in falconry.* If you meet the conditions outlined in §21.29 (c)(3)(iv) of this part, and you have a permit to possess a golden eagle (*Aquila chrysaetos*) from your State, tribe, or territory, we consider your permit sufficient for the purposes of the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), subject to the requirement that take of golden eagles for falconry is compatible with the preservation of the golden eagle.

(b) *Transfer of golden eagles trapped by government employees to other permittees.* If you have the necessary permit(s) from your State, tribe, or territory, a government employee who has trapped a golden eagle under a Federal depredation permit or under a depredation control order may transfer the bird to you if he or she cannot release the eagle in an appropriate location. A golden eagle may only be taken from a livestock or wildlife depredation area declared by USDA Wildlife Services and permitted under §22.23, or from a livestock depredation area authorized in accordance with Subpart D, Depredation Control Orders on Golden Eagles.

[73 FR 59477, Oct. 8, 2008, as amended at 75 FR 932, Jan. 7, 2010]

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### **§22.25 What are the requirements concerning permits to take golden eagle nests?**

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing any person to take golden eagle nests during a resource development or recovery operation when the nests are inactive, if the taking is compatible with the preservation of the area nesting population of golden eagles. The information collection requirements contained within this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to the criteria established in this section for the issuance or denial of such permits. The obligation to respond is required to obtain or retain a permit.

(a) *How do I apply for a permit to take golden eagle nests?* You must submit applications for permits to take golden eagle nests to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. We will only accept applications if you are engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Your application must contain the general information and certification required by §13.12(a) of this chapter plus the following additional information:

(1) A description of the resource development or recovery operation in which the applicant is engaged;

(2) The number of golden eagle nests proposed to be taken;

(3) A description of the property on which the taking is proposed, with reference made to its exact geographic location. An appropriately scaled map or plat must be included which delineates the area of the resource development or recovery operation and identifies the exact location of each golden eagle nest proposed to be taken. The map or plat must contain enough detail so that each golden eagle nest

proposed to be taken can be readily located by the Service.

(4) For each golden eagle nest proposed to be taken, the applicant must calculate the area nesting population of golden eagles and identify on an appropriately scaled map or plat the exact location of each golden eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population. The map or plat must contain enough details so that each golden eagle nest used to calculate the area nesting population can be readily located by the Service.

(5) A description of each activity to be performed during the resource development or recovery operation which involves the taking of a golden eagle nest;

(6) A statement with any supporting documents from ornithologists experienced with golden eagles or other qualified persons who have made on site inspections and can verify the applicant's calculation of the area nesting population;

(7) The length of time for which the permit is requested, including the dates on which the proposed resource development or recovery operation is to begin and end;

(8) A statement indicating the intended disposition of each nest proposed to be taken. Applicants should state whether they are willing to collect any nest for scientific or educational purposes; and

(9) A statement indicating any proposed mitigation measures that are compatible with the resource development or recovery operation to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any inactive golden eagle nest taken, or establishing one or more nest sites. If the establishment of one or more nest sites is proposed, a description of the materials and methods to be used and the exact location of each artificial nest site must be included.

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this chapter, permits to take golden eagle nests are subject to the following additional conditions:

(1) Only inactive golden eagle nests may be taken.

(2) The permittee shall submit a report of activities conducted under the permit to the Director within ten (10) days following the permit's expiration;

(3) The permittee shall notify the Director in writing at least 10 days but not more than 30 days before any golden eagle nest is taken;

(4) The permittee shall comply with any mitigation measures determined by the Director to be

feasible and compatible with the resource development or recovery operation; and

(5) Any permit issued before the commencement of a resource development or recovery operation is invalid if the activity which required a permit is not performed.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take any golden eagle nest unless such taking is compatible with the preservation of the area nesting population of golden eagles. In making such determination, the Director shall consider the following:

(1) Whether the applicant can reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest;

(2) The total number of golden eagle nests proposed to be taken;

(3) The size of the area nesting population of golden eagles;

(4) Whether suitable golden eagle nesting and foraging habitat unaffected by the resource development or recovery operation is available to the area nesting population of golden eagles to accommodate any golden eagles displaced by the resource development or recovery operation;

(5) Whether feasible mitigation measures compatible with the resource development or recovery operation are available to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any golden eagle nest taken, or establishing one or more nest sites; and

(6) Whether the area nesting population is widely dispersed or locally concentrated.

(d) *Tenure of permits.* The tenure of any permit to take golden eagle nests is 2 years from the date of issuance, unless a shorter period of time is prescribed on the face of the permit. Permits may be renewed in accordance with part 13 of this chapter.

[48 FR 57300, Dec. 29, 1983, as amended at 63 FR 52638, Oct. 1, 1998; 64 FR 50474, Sept. 17, 1999]

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## **§22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.**

(a) *Purpose and scope.* This permit authorizes take of bald eagles and golden eagles where the take is compatible with the preservation of the bald eagle and the golden eagle; necessary to protect an interest in a particular locality; associated with but not the purpose of the activity; and

(1) For individual instances of take: the take cannot practicably be avoided; or

(2) For programmatic take: the take is unavoidable even though advanced conservation practices are being implemented.

(b) *Definitions.* In addition to the definitions contained in part 10 of this subchapter, and §22.3, the following definition applies in this section:

*Eagle* means a live bald eagle (*Haliaeetus leucocephalus*), live golden eagle (*Aquila chrysaetos*), a bald eagle egg, or a golden eagle egg.

(c) *Permit conditions.* In addition to the conditions set forth in part 13 of this subchapter, which govern permit renewal, amendment, transfer, suspension, revocation, and other procedures and requirements for all permits issued by the Service, your authorization is subject to the following additional conditions:

(1) You must comply with all avoidance, minimization, or other mitigation measures determined by the Director as reasonable and specified in the terms of your permit to compensate for the detrimental effects, including indirect effects, of the permitted activity on the regional eagle population;

(2) You may be required to monitor eagle use of important eagle-use areas where eagles are likely to be affected by your activities for up to 3 years after completion of the activity or as set forth in a separate management plan, as specified on your permit. Unless different monitoring protocols are required under a separate management plan approved by the Service and denoted on the permit, monitoring consists of periodic site visits, during the season(s) when eagles would normally be present, to the area where the take is likely to occur, and noting whether eagles continue to nest, roost, or forage there. The periodic monitoring is required for the duration of the activity that is likely to cause take (during the season(s) that eagles would normally be present). The frequency and duration of required monitoring *after* the activity is completed will depend on the form and magnitude of the anticipated take and the objectives of associated conservation measures, not to exceed what is reasonable to meet the primary purpose of the monitoring, which is to provide data needed by the Service regarding the impacts of human activity on eagles for purposes of adaptive management. Monitoring will not be required beyond 3 years after completion of an activity that was likely to cause take. For ongoing activities and enduring site features that continue to be likely to result in take, periodic monitoring may be required for as long as the data are needed to assess impacts to eagles.

(3) You must submit an annual report summarizing the information you obtained through monitoring to the Service every year that your permit is valid and for up to 3 years after completion of the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed, you must submit the report within 60 days of such date. The Service will make eagle mortality information from annual reports of programmatic



permits available to the public. Reporting requirements include:

(i) Whether eagles are observed using the important eagle-use areas designated on the permit;  
and

(ii) Description of the human activities conducted at the site when eagles are observed.

(4) While the permit is valid and for up to 3 years after it expires, you must allow Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).

(5) The authorizations granted by permits issued under this section apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes after a permit is issued, you must immediately contact the Service to determine whether a permit amendment is required in order to retain take authorization.

(6) You must contact the Service immediately upon discovery of any unanticipated take.

(7) The Service may amend, suspend, or revoke a programmatic permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§13.23, 13.27, and 13.28.

(8) Notwithstanding the provisions of §13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

(9) You must promptly notify the Service of any eagle(s) found injured or dead at the activity site, regardless of whether the injury or death resulted from your activity. The Service will determine the disposition of such eagles.

(10) The authorization granted by permits issued under this section is not valid unless you are in compliance with all Federal, tribal, State, and local laws and regulations applicable to take of eagles.

(d) *Applying for an eagle take permit.* (1) You are advised to coordinate with the Service as early as possible for advice on whether a permit is needed and for technical assistance in assembling your permit application package. The Service may provide guidance on developing complete and adequate application materials and will determine when the application form and materials are ready for submission.

(2) Your application must consist of a completed application Form 3-200-71 and all required attachments. Send applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in §2.2 of subchapter A of this chapter.

(e) *Evaluation of applications.* In determining whether to issue a permit, we will evaluate:

(1) Whether take is likely to occur based on the magnitude and nature of the impacts of the activity, which include indirect effects. For potential take in the form of disturbance, this evaluation would include:

(i) The prior exposure and tolerance to similar activity of eagles in the vicinity;

(ii) Visibility of the activity from the eagle's nest, roost, or foraging perches; and

(iii) Whether alternative suitable eagle nesting, roosting, and/or feeding areas that would not be detrimentally affected by the activity are available to the eagles potentially affected by the activity.

(2) Whether the take is:

(i) Compatible with the preservation of the bald eagle and the golden eagle, including consideration of indirect effects and the cumulative effects of other permitted take and other additional factors affecting eagle populations;

(ii) Associated with the permanent loss of an important eagle use area;

(iii) Necessary to protect a legitimate interest in a particular locality; and

(iv) Associated with, but not the purpose of, the activity.

(3) Whether the applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable, and for programmatic authorizations, the take is unavoidable despite application of advanced conservation practices developed in coordination with the Service.

(4) Whether issuing the permit would preclude the Service from authorizing another take necessary to protect an interest of higher priority, according to the following prioritization order:

(i) Safety emergencies;

(ii) Native American religious use for rites and ceremonies that require eagles be taken from the wild;

(iii) Renewal of programmatic take permits;

(iv) Non-emergency activities necessary to ensure public health and safety; and

(v) Other interests.

(5) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population.

(f) *Required determinations.* Before we issue a permit, we must find that:

(1) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles;

(2) The taking is necessary to protect a legitimate interest in a particular locality;

(3) The taking is associated with, but not the purpose of, the activity;

(4) The taking cannot practicably be avoided; or for programmatic authorizations, the take is unavoidable;

(5) The applicant has avoided and minimized impacts to eagles to the extent practicable, and for programmatic authorizations, the taking will occur despite application of advanced conservation practices; and

(6) Issuance of the permit will not preclude issuance of another permit necessary to protect an interest of higher priority as set forth in paragraph (e)(4) of this section.

(g) We may deny issuance of a permit if we determine that take is not likely to occur.

(h) *Permit reviews.* At no more than 5 years from the date a permit is issued, and every 5 years thereafter until a programmatic permit is due to expire in 5 or fewer years, the permittee will compile and submit to the Service, eagle fatality data or other pertinent information that is site-specific for the project, as required by the permit. The 5-year review will be comparable to the initial review of the permit application. The Service will make eagle-mortality information compiled in 5-year review reports available to the public. As part of the 5-year-review process, we will determine if trigger points specified in the permit have been reached that would indicate that additional conservation measures as described in a permit should be implemented to potentially reduce eagle mortalities, or if additional mitigation measures are needed. Additional post-implementation monitoring may be required to determine the effectiveness of additional conservation measures.

(1) During each 5-year review, we will reassess post-construction monitoring, fatality rates, effectiveness of measures to reduce take, the appropriate amount and effectiveness of compensatory mitigation, and the status of the eagle population.

(2) Depending on the findings of the review, we may make changes to a permit as necessary, including any of the following:

- (i) update fatality predictions for the facility;
- (ii) require implementation of additional conservation measures as described in the permit;
- (iii) update monitoring requirements
- (iv) revise compensatory mitigation requirements in accordance with the permit, or
- (v) suspend or revoke the permit.

(3) In consultation with the permittee, we will determine compensatory mitigation for future years for the project, taking into account the observed levels of mortality and any anticipated reduction in mortality from additional conservation measures.

(i) *Permit duration.* The duration of each permit issued under this section will be designated on its face and will be based on the duration of the proposed activities, the period of time for which take will occur, the level of impacts to eagles, and the nature and extent of mitigation measures incorporated into the terms and conditions of the permit. Standard permits will not exceed 5 years. A permit for programmatic take will not exceed 30 years.

(j) *Transfer of programmatic permits.* Programmatic permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by the U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The transferee must meet all of the qualifications under this part for holding a permit, as well as the requirements of §13.25(b) of this subchapter B.

[74 FR 46877, Sept. 11, 2009, as amended at 79 FR 73725, Dec. 9, 2013]

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## **§22.27 Removal of eagle nests.**

(a) *Purpose and scope.* (1) A permit may be issued under this section to authorize removal or relocation of:

- (i) An active or inactive nest where necessary to alleviate a safety emergency;
- (ii) An inactive eagle nest when the removal is necessary to ensure public health and safety;
- (iii) An inactive nest that is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use; or
- (iv) An inactive nest, provided the take is necessary to protect an interest in a particular locality and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles.

(2) Where practicable and biologically warranted, the permit may require a nest to be relocated, or a substitute nest provided, in a suitable site within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a threat to safety. However, we may issue permits to remove nests that we determine cannot or should not be relocated. The permit may authorize take of eggs or nestlings if present. The permit may also authorize the take of adult eagles (e.g., disturbance or capture) associated with the removal or relocation of the nest.

(3) A programmatic permit may be issued under this section to cover multiple nest takes over a period of up to 5 years, provided the permittee complies with comprehensive measures that are developed in coordination with the Service, designed to reduce take to the maximum degree technically achievable, and specified as conditions of the permit.

(4) This permit does not authorize intentional, lethal take of eagles.

(b) *Conditions.* (1) Except for take that is necessary to alleviate an immediate threat to human or eagle safety, only inactive eagle nests may be taken under this permit.

(2) When an active nest must be removed under this permit, any take of nestlings or eggs must be conducted by a Service-approved, qualified, and permitted agent, and all nestlings and viable eggs must be immediately transported to foster/recipient nests or a rehabilitation facility permitted to care for eagles, as directed by the Service.

(3) Possession of the nest for any purpose other than removal or relocation is prohibited without a separate permit issued under this part authorizing such possession.

(4) You must submit a report consisting of a summary of the activities conducted under the permit to the Service within 30 days after the permitted take occurs, except that for programmatic permits, you must report each nest removal within 10 days after the take and submit an annual report by January 31 containing all the information required in Form 3-202-16 for activities conducted during the preceding calendar year.

(5) You may be required to monitor the area and report whether eagles attempt to build or occupy another nest at another site in the vicinity for the duration specified in the permit.

(6) You may be required under the terms of the permit to harass eagles from the area following the nest removal when the Service determines it is necessary to prevent eagles from re-nesting in the vicinity.

(7) You must comply with all avoidance, minimization, or other mitigation measures determined by the Director as reasonable and specified in the terms of your permit to compensate for the detrimental effects, including indirect effects, of the permitted activity on—and for permits issued under paragraph (a)(1)(iv) of this section, to provide a net benefit to—the regional eagle population.

(8) The Service may amend or revoke a programmatic permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations.

(9) Notwithstanding the provisions of §13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

(10) The authorization granted by permits issued under this section is not valid unless you are in compliance with all Federal, tribal, State, and local laws and regulations applicable to take of eagles.

(c) *Applying for a permit to take eagle nests.* (1) If the take is necessary to address an immediate threat to human or eagle safety, contact your local U.S. Fish and Wildlife Service Regional Migratory Bird Permit Office (<http://www.fws.gov/permits/mbpermits/addresses.html>) at the earliest possible opportunity to inform the Service of the emergency.

(2) Your application must consist of a completed application Form 3-200-72 and all required attachments. Send applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in §2.2 of subchapter A of this chapter.

(d) *Evaluation of applications.* In determining whether to issue a permit, we will evaluate:

(1) Whether the activity meets the requirements of paragraph (a)(1) of this section;

(2) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations;

(3) Whether there is a practicable alternative to nest removal that will protect the interest to be served;

(4) Whether issuing the permit would preclude the Service from authorizing another take necessary to protect an interest of higher priority, as set forth in paragraph (e)(5) of this section;

(5) For take that is not necessary to alleviate an immediate safety emergency, whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal; and

(6) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population.

(e) *Required determinations.* Before issuing a permit under this section, we must find that:

(1) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of the bald eagle or the golden eagle;

(2) For inactive nests:

(i) The take is necessary to ensure public health and safety;

(ii) The nest is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use; or

(iii) The take is necessary to protect a legitimate interest in a particular locality, and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles;

(3) For active nests, the take is necessary to alleviate an immediate threat to human safety or eagles;

(4) There is no practicable alternative to nest removal that would protect the interest to be served; and

(5) Issuing the permit will not preclude the Service from authorizing another take necessary to protect an interest of higher priority, according to the following prioritization order:

(i) Safety emergencies;

(ii) Native American religious use for rites and ceremonies that require eagles be taken from the wild;

(iii) Renewal of programmatic nest-take permits;

- (iv) Non-emergency activities necessary to ensure public health and safety;
- (v) Resource development or recovery operations (under §22.25, for golden eagle nests only);
- (vi) Other interests.

(6) For take that is not necessary to alleviate an immediate threat to human safety or eagles, we additionally must find that suitable nesting and foraging habitat is available to the area nesting population of eagles to accommodate any eagles displaced by the nest removal.

(f) *Tenure of permits.* The tenure of any permit to take eagle nests under this section is set forth on the face of the permit and will not be longer than 5 years.

[74 FR 46877, Sept. 11, 2009]

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## **§22.28 Permits for bald eagle take exempted under the Endangered Species Act.**

(a) *Purpose and scope.* This permit authorizes take of bald eagles (*Haliaeetus leucocephalus*) in compliance with the terms and conditions of a section 7 incidental take statement under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*; 50 CFR 402, Subpart B) issued prior to the effective date of 50 CFR 22.26.

(b) *Issuance criteria.* Before issuing you a permit under this section, we must find that you are in full compliance with the terms and conditions contained in the applicable ESA incidental take statement issued prior to the effective date of 50 CFR 22.26 for take of eagles, based on your certification and any other relevant information available to us, including, but not limited to, monitoring or progress reports required pursuant to your incidental take statement. The terms and conditions of the Eagle Act permit under this section, including any modified terms and conditions, must be compatible with the preservation of the bald eagle.

(c) *Permit conditions.* (1) You must comply with all terms and conditions of the incidental take statement issued under section 7 of the ESA, or modified measures specified in the terms of your permit issued under this section. At permit issuance or at any time during its tenure, the Service may modify the terms and conditions that were included in your ESA incidental take statement, based on one or more of the following factors:

- (i) You requested and received modified measures because some of the requirements for take authorization under the ESA were not necessary for take authorization under the Eagle Act;
- (ii) The amount or extent of incidental take authorized under the take statement is exceeded;



(iii) New information reveals effects of the action that may affect eagles in a manner or to an extent not previously considered, and requires modification of the terms and conditions to ensure the preservation of the bald eagle or the golden eagle; or

(iv) The activity will be modified by the permittee in a manner that causes effects to eagles that were not previously considered and which requires modification of the terms and conditions in the incidental take statement in order to ensure the preservation of the bald eagle or the golden eagle.

(2) During any period when the eagles covered by your incidental take statement are listed under the ESA, you must comply with the terms and conditions of both the incidental take statement and the permit issued under this section.

(d) *Permit duration.* The permit will be valid until the action that will take eagles, as described in the incidental take statement or modified to condition the permit issued under this section, is completed, as long as the permittee complies with the terms and conditions of the permit, including any modified terms and conditions.

(e) *Applying for an eagle take permit.* (1) Your application must consist of a copy of the applicable section 7 incidental take statement issued pursuant to the Endangered Species Act (ESA), and a signed certification that you are in full compliance with all terms and conditions of the ESA incidental take statement.

(2) If you request reevaluation of the terms and conditions required under your previously granted ESA incidental take statement for eagles, you must include a description of the modifications you request, and an explanation for why you believe the original conditions or measures are not reasonably justified to offset the detrimental impact of the permitted activity on eagles.

(3) Send completed permit applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in §2.2 of subchapter A of this chapter.

[73 FR 29083, May 20, 2008; 74 FR 46879, Sept. 11, 2009]

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## Subpart D—Depredation Control Orders on Golden Eagles

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### §22.31 Golden eagle depredations control order on request of Governor of a State.

(a) Whenever the Governor of any State requests permission to take golden eagles to seasonally protect domesticated flocks and herds in such State, the Director shall make an investigation and if he determines that such taking is necessary to and will seasonally protect domesticated flocks and herds in such States he shall authorize such taking in whatever part or parts of the State and for such periods as he determines necessary to protect such interests.

(b) Requests from the Governor of a State to take golden eagles to seasonally protect domesticated flocks and herds must be submitted in writing to the Director listing the periods of time during which the taking of such birds is recommended, and including a map of the State indicating the boundaries of the proposed area of taking. Such requests should include a statement of the facts and the source of such facts that in the Governor's opinion justifies the request. After a decision by the Director, the Governor will be advised in writing concerning the request and a notice will be published in the FEDERAL REGISTER.

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### **§22.32 Conditions and limitations on taking under depredation control order.**

(a) Whenever the taking of golden eagles without a permit is authorized for the seasonal protection of livestock, such birds may be taken by firearms, traps, or other suitable means except by poison or from aircraft.

(b) Any person exercising any of the privileges granted by this subpart D must permit all reasonable times, including during actual operations, any Service agent, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require concerning such operations.

(c) The authority to take golden eagles under a depredations control order issued pursuant to this subpart D only authorizes the taking of golden eagles when necessary to seasonally protect domesticated flocks and herds, and all such birds taken must be reported and turned over to a local Bureau Agent.

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