

**1 Supporting Statement A for
Paperwork Reduction Act Submission
OMB Control Number 1018-XXXX**

**Eagle Take Permits and Fees
50 CFR 22**

Note: Information collection requirements for migratory bird permits are approved under OMB Control No. 1018-0022, which expires May 31, 2017. Long-term eagle permits are included under that approval. This ICR contains information collection requirements and fees for the long-term permits affected by the proposed rule. If OMB approves this collection, we will incorporate the new requirements into the renewal of OMB Control Number 1018-0022 and discontinue this OMB Control No.

1. Explain the circumstances that make the collection of information necessary.

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at Title 50, part 22 of the Code of Federal Regulations (CFR), define the “take” of an eagle to include the following broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.” The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations.

Regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles, where the taking is associated with, but not the purpose of, an activity. The current regulations provide for both standard permits and programmatic permits. Permits authorize individual instances of take that cannot practicably be avoided and authorize recurring take that is unavoidable even after implementation of advanced conservation practices.

We propose revisions to our regulations regarding the issuance of permits for certain activities involving eagles.

We propose to remove the distinction between standard and programmatic permits, codify standardized mitigation requirements that comport with the Service’s draft mitigation policy, and extend the maximum permit duration for eagle incidental take permits (50 CFR 22.26). The proposed regulations also present a number of additional revisions to the eagle incidental take and eagle nest take regulations at 50 CFR 22.27, as well as revisions to the permit fee schedule at 50 CFR 13.11.

In April, 2012, the Service initiated two additional rulemakings: (1) a proposed rule to extend the maximum permit tenure for programmatic eagle nonpurposeful take permit regulations from 5 to 30 years, among other changes (“Duration Rule”) (77 FR 22267), and (2) an advance notice of proposed rulemaking (ANPR) soliciting input on all aspects of those eagle nonpurposeful take regulations (77 FR 22278).

The ANPR highlighted three main issues for public comment: our overall eagle population management objectives; compensatory mitigation required under permits; and the nonpurposeful take programmatic permit issuance criteria. As a next step, the Service issued a notice of intent to prepare an environmental assessment (EA) or environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) (79 FR 35564, June 23, 2014). The Service then held five public scoping meetings between July 22 and August 7, 2014.

The Duration Rule was finalized on December 9, 2013 (78 FR 73704). However, it was the subject of a legal challenge, and on August 11, 2015, the U.S. District Court for the Northern District of California vacated the provisions that extended the maximum programmatic permit tenure to 30 years. *Shearwater v. Ashe*, No. CV02830-LHK (N.D. Cal., Aug. 11, 2015). The court held that the Service should have prepared an EA or EIS rather than apply a categorical exclusion under NEPA. The effect of the ruling was to return the maximum programmatic permit term to 5 years.

The Service has prepared a draft programmatic environmental impact statement (DPEIS) to analyze eagle management objectives and these proposed revisions to the 2009 eagle permit regulations. The draft DPEIS is available on the Service's website at: <http://www.fws.gov/birds/management/managed-species/eagle-management.php> and at: www.regulations.gov at Docket No. FWS–R9–MB–2011–0094.

The 5-year maximum duration for permits appears to be a primary factor discouraging many project proponents from seeking eagle take permits. Many activities that incidentally take eagles due to ongoing operations have lifetimes that far exceed 5 years. We need to issue permits that align better, both in duration and the scale of conservation measures, with the longer term duration of industrial activities, such as electricity distribution and energy production. Extending the maximum permit duration is consistent with other federal permitting for development and infrastructure projects.

To recoup the cost of processing longer-term permits, which are generally complex due to the need to develop robust adaptive management measures, we propose to assess a \$36,000 permit application processing fee for eagle incidental take permits of 5 years duration or longer. The permit processing fee for 5-year programmatic permit applications is \$36,000 currently. A commercial applicant for an incidental take permit of a duration less than 5 years would pay a \$2,500 permit application processing fee, an increase from the current fee of \$1,000 for programmatic permits and \$500 for standard permits. The higher fee better reflects the costs of processing those permits. The amendment fee for those permits would increase from \$150 to \$500. The incidental take permit application processing fee for homeowners would remain \$500 and the amendment fee for those permits would also remain unchanged at \$150. The proposed higher fees for commercial entities would recover a larger portion of the actual cost to the Service, including technical assistance provided to the potential applicant by the Service prior to receiving the actual permit application package. Commercial entities have the opportunity to recoup the costs of doing business by passing those costs on to their customers. For homeowner permits, the fees would remain the same, even though Federal agencies are directed to recoup the full costs of processing permits. The reality is that many of the homeowners who justifiably need eagle permits would not be able to pay the actual full cost to the Service of providing technical assistance to the homeowner and processing their permit applications.

We propose to assess a \$15,000 user fee called an Administration Fee every 5 years for long-term permits. This fee would cover the cost to the Service of conducting the 5-year evaluation and developing any appropriate modifications to the permit.

- 2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.**

The following information collection is approved under OMB Control Number 1018-0022:

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone and fax numbers, social security or tax identification number, and email address. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically, as necessary. Submission of reports is generally on an annual basis, although some are dependent on specific transactions.

Applications (includes researching permit requirements, conducting preapplication surveys/studies, and completing the application form)

We will continue to use FWS Form 3-200-71 (Eagle Take–Necessary to Protect Interests in a Particular Locality) as the application for nonpurposeful (incidental) take permits. These permits allow nonpurposeful take of eagles that is incidental to otherwise lawful actions. We will continue to use FWS Form 3-200-72 (Eagle Nest Take) as the application for eagle nest take take permits.

The information we collect on FWS Form 3-200-71 and Form 3-200-72 allows us to assess the qualifications of applicants for permits. These forms are approved under OMB Control Number 1018-0022, which expires May 31, 2017. We are not making any substantive changes to these forms. We will only modified Section D to indicate the new permit fees.

Monitoring and Reporting

Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed. Permit recipients will use FWS Form 3-202-15 (Eagle Take (50 CFR 22.26) – Annual Report) to meet the reporting requirements at 22.26(c)(3). This form is approved under OMB Control No. 1018-0022, which expires May 31, 2017. We are not proposing any changes to this form. We use this information to evaluate compliance with the terms and conditions of the permit, and results of measures to minimize and mitigate impacts on covered species. For long-term permits, we would also use the data to evaluate whether the permittee will implement adaptive management strategies set forth in the terms of the permit. We will use the results of these evaluations to:

- Determine if the conservation strategies are reaching the intended biological goals.
- Implement improved management strategies.
- Evaluate the success of the permit program.
- Gather information needed for future permit issuance determinations.

Permittees are also required to promptly notify the Service via email or phone when an injured or dead eagle is found in the vicinity of the permitted activity.

Permit Review

Under the proposed regulations, every 5 years, long-term permittees would be required to

compile information on eagle fatality and submit this information to the Service. We propose to assess a \$15,000 user fee called an Administration Fee every 5 years for long-term permits to cover the cost to the Service of conducting the 5-year evaluation and modifying permits.

Recordkeeping

Permittees must keep records of the take that occurs under from the permitted activity and the data gathered through surveys and monitoring.

Amendments

Substantive amendments include changes to permit the authorization or conditions. The permittee must apply for such an amendment to the permit by submitting a description of the modified activity and the changed impacts to eagles.

Transfers

Permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by 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. No changes are being proposed to the permit transfer provisions.

The proposed rule would establish a reporting requirement for 5-year permit reviews. We estimate 4 responses per year totaling 32 annual burden hours (see item 12).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.]

FWS Forms 3-200-71, 3-200-72, and 3-202-15 are available in fillable format on our forms and permits websites, by mail, or by fax. Applicants may complete the fillable application online, but must send the application form with an original signature and the processing fee to the Service by mail. At this time, we do not have a system for electronic submission of permit application forms or report forms; however, we are actively developing the system and are pilot testing two Service application forms that have current OMB approval. Applicants may send us any supporting documentation or information missing from the application, other than original signature, via electronic mail or fax. Some Regional permit offices accept annual reports via email.

4. Describe efforts to identify duplication.

The information that we collect is unique to the applicant and is not available from any other source. We keep application and reporting information in office files to eliminate repeat or duplicate requests in the case of renewals, extensions, or repeat applications. We developed an electronic permit issuance and tracking system that greatly improves retrieval of file information, therefore further reducing duplicate information requests for use in renewals, extensions, and repeat applications. Since only the Service may issue this type of permit for species under our jurisdiction, there is no duplication of other agencies' efforts. Ongoing development of our permit issuance and tracking system will ensure that no duplication arises among Service offices.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

The information requested on the application form is limited to the minimum necessary to establish eligibility and the information requested on the reporting requirements is the minimum necessary to enable us to assess the effect of the permit program on eagles.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If we do not collect the information or if we collect the information less frequently, we could not issue applicants a permit since the collected information is either required on the permit or authorization itself or is needed to make the necessary biological and legal findings under applicable statutes and treaties. If we were not able to satisfy the information requirements necessary to issue a permit, the public would not be able to conduct otherwise prohibited activities. Furthermore, the timely submission of data on the effects to eagles of permitted activities will enable the Service to determine when adaptive management measures must be implemented by the permittee to ensure the activity remains compatible with the preservation of the eagle.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Federal regulations governing fish and wildlife permits at 50 CFR 13.46 require permittees to maintain records for 5 years from the date of expiration of the permit. Other than that requirement, there are no special circumstances that would cause us to conduct this information collection in a manner inconsistent with OMB guidelines.

8. Provide the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and

describe actions taken by the agency in response to these comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

We are publishing a proposed rule and soliciting public comments on the information collection requirements for 30 days. A copy of the proposed rule is attached as a supplementary document. The proposed rule will solicit public comment for a period of 30 days on the information collection and recordkeeping requirements described in this supporting statement.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide any payment or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality. Information collected on permit applications is subject to the Privacy Act and Freedom of Information Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

We are estimating 4 responses totaling 32 annual burden hours (8 hours per response) for the proposed 5-year permit review requirement. We will not collect this information or assess the \$15,000 administration fee until the permittee has had a permit for 5 – years (earliest probably 2022). We estimate that, in the beginning, we will receive 19 responses every 5 years. This is annualized at 4 responses each year. After the initial 5-year period, we expect the number of responses to increase because of the continuing increase in the number of permittees holding permits with a term of 5 years or longer.

We used the Bureau of Labor Statistics news release USDL-16-0463, March 10, 2016, Employer Costs for Employee Compensation—December 2015, to estimate average hourly wages and calculate benefits::

- Private Sector - We used the total compensation cost for all workers from Table 5, which states an hourly rate of \$31.70.

We estimate the dollar value of the annual burden hours to meet the proposed 5-year permit review requirement will be \$1,014 (rounded) ($\$31.70 * 32$).

All other burden for eagle take permits is approved under OMB Control No. 1018-0022.

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

The following table explains the proposed changes in fees for eagle take permits:

| Activity/Requirement | Existing Approval (1018-0022) | | Current Fee | Proposed Fee | Total Approved Nonhour Burden Cost | Total Proposed Nonhour Burden Cost | Difference between 1018-0022 and proposed |
|---|---|----|--------------------|---|------------------------------------|------------------------------------|---|
| CHANGE IN NONHOUR COST BURDEN | | | | | | | |
| 3-200-71 - application, Eagle Incidental Take – (not programmatic or long-term) ¹ | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$500 \$500 | \$500 – Homeowner \$2,500 – Commercial | \$72,500 | \$ 12,500 \$300,000 | +\$240,000 |
| 3-200-72 - application, Eagle Nest Take – single nest (formerly “standard”) ² | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$500 | \$500 – Homeowner \$2,500 – Commercial | \$15,000 | \$55,000 | +\$40,000 |
| 3-200-72—application, Eagle Nest Take – multiple nests (formerly “programmatic”) ³ | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$0 | \$500 – Homeowner \$2,500 – Commercial | \$ 0 | \$20,500 | +\$20,500 |
| 3-200-71 Eagle Incidental Take Amendment -less than 5 years (formerly “standard”) ⁴ | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$150 | \$150 – Homeowner \$500 - Commercial | \$3,000 ⁵ | \$9,300 | \$6,300 ⁸ |
| 3-200-72 Eagle Nest Take Amendment- “Single nest” (formerly “standard”) ⁴ | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$150 | \$150 – Homeowner \$500 – Commercial | \$750 ⁶ | \$2,150 | +\$1,400 |
| 3-200-71 Amendment - Eagle Incidental Take Programmatic | No. of responses and annual burden hours approved under OMB Control No. 1018-0022. This proposed rule revises fees and nonhour costs. | | \$1,000 | No Fee ⁷ | \$2,000 | | - \$2,000 ⁸ |
| TOTAL | 4 | 32 | | | 93,250 | 459,450 | 366,200 |

¹ Approved under 1018-0022 – 145 annual responses (25 from individuals/households (homeowners) and 120 from the private sector (commercial) totaling 2,320 annual burden hours) (400 burden hours for individuals and 1,920 annual burden hours for private sector); \$500 permit fee for both individuals and private sector for a total nonhour

burden cost of \$72,500. This proposed rule changes the application fees: Homeowner fee would remain \$500; private sector fee (commercial) would increase to \$2,500. Total for 25 homeowners - \$12,500; Total for 125 commercial applicants - \$300,000).

² Approved under 1018-0022 – 30 responses (10 from Individuals/homeowners and 20 from private sector (commercial) totaling 480 burden hours (160 hours (individuals) and 320 hours (private sector)). Homeowner fee would remain \$500; private sector fee (commercial) would increase to \$2,500. Total for 10 homeowners - \$5,000.; Total for 20 commercial applicants - \$50,000).

³ Approved under 1018-0022 – 9 responses (1 from Individuals/homeowners and 8 from private sector (commercial) totaling 360 burden hours (40 hrs (individuals) and 320 hrs (private sector)). The approved non-hour burden cost is \$0; however, that is an error. The permit application processing fee for programmatic nest take permits under the current regulations is \$1,000, so the total current burden cost should be \$9,000 (9 responses). Under the proposed rule, the homeowner fee would increase to \$500; private sector fee (commercial) would increase to \$2,500. Total for 1 homeowner - \$500; total for 8 commercial - \$20,000.

⁴ The amendments for standard non-purposeful eagle take permits and standard eagle nest take permits are combined in the approved collection for a total of 25. Here they are split into 20 eagle incidental take permit amendments and 5 eagle nest take permit amendments.

⁵ Two Homeowner, Eighteen Commercial.

⁶ One Homeowner; Four Commercial

⁷ The amendment fee for long-term programmatic permits is approved under 1018-0022. Under this proposed rule, it is being removed because the costs associated with it would be included under the proposed Administration Fee.

⁸ ROCIS would not allow entering negative \$2,000 to account for the elimination of fees. Therefore, in ROCIS, the elimination is reflected for the eagle nest take amendment total nonhour cost burden.

We estimate \$459,450 for administration fees and application fees associated with changes in this proposed rule. This does not include the nonhour cost burden for eagle/eagle nest take permits approved under OMB Control No. 1018-0022 (\$93,250). States, local governments, and tribal governments are exempt from paying these fees. Therefore. We are reporting \$366,200 as the difference between the nonhour cost burden approved under 1018-0022 and the proposed changes in the proposed rule.

14. Provide estimates of annualized costs to the Federal Government.

We estimate the total cost to the Federal Government to administer information collection associated with all migratory bird permit applications and reports is \$3,109,841 (\$3,047,441 approved under OMB Control Number 1018-0022 (includes eagle take permits) and \$62,400 in this ICR).

For the proposed rule, we estimate the total cost to the Federal Government to review and process information associated with 5-year permit reviews will be \$62,400 (\$52 per hour X 1,200 hours). We estimate that it will take 300 hours for Federal staff to review and process each 5-year permit. We propose to assess a \$15,000 administration fee to each permittee every 5 years to cover the cost of Federal staff to review and process the information.

Service biologists (GS-11/13) and permit examiners (GS-9/12), with support of GS-7 staff, will:

- Review and determine the adequacy of the information an applicant provides.
- Conduct any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity.
- Assess the biological impact of the proposed activity on the bald or golden eagle.
- Evaluate whether the proposed activity meets the issuance criteria.
- Prepare or review NEPA documentation.

- Prepare either a permit or a denial letter for the applicant.
- When necessary to evaluate the impact of the proposed activity, visit the location to examine site-specific conditions.
- Monitor reports.

Permits are processed in our eight Regional Offices, which are located in major cities across the United States. Therefore, we used Office of Personnel Management Salary Table 2016-DCB to determine average hourly wages. We multiplied the hourly rate by 1.5 to account for benefits in accordance with BLS news release USDL 13-1835.

The table below shows Federal staff and grade levels performing various tasks associated with this information collection.

| POSITION/GRADE | HOURLY RATE | HOURLY RATE INCLUDING BENEFITS | TIME SPENT ON INFORMATION COLLECTION | WEIGHTED AVERAGE \$/HOUR |
|---|--------------------|---------------------------------------|---|---------------------------------|
| Clerical - GS-7/step 5 (Receptionist, Office Asst.) | \$23.72 | \$35.58 | 5% | \$ 1.78 |
| Legal documents examiner–GS-9/step 5 (Permit examiner) | 29.02 | 43.53 | 30% | 13.06 |
| Legal documents examiner-GS-11/step 5 (Permit examiner) | 35.11 | 52.67 | 30% | 15.80 |
| Biologist - GS-11/step 5 | 35.11 | 52.67 | 10% | 5.27 |
| Supervisor – GS-12/step 5 (Permit Chief) | 42.08 | 63.12 | 20% | 12.62 |
| Management - GS-13/step 5 (Branch/Division Chief, Solicitor) | 48.35 | 72.53 | 5% | 3.63 |
| Weighted Average (\$/hr) | | | | \$52.16 |

15. Explain the reasons for any program changes or adjustments.

We are reporting 4 annual responses, 32 annual burden hours, and \$366,200 in nonhour burden costs as program changes for this proposed rule. The 4 responses and 32 burden hours are associated with the proposed requirement for 5-year reviews. The revisions to the nonhour burden costs are associated with proposed changes in fees.

All other burden for eagle take permits is approved under OMB Control Number 1018-0022. The 171 responses entered in ROCIS as adjustments are approved under 1018-0022. The responses are only entered for this ICR as a means to calculate the nonhour costs.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We do not publish the results of these information collections.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.