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Title 50 —Wildlife and Fisheries

Chapter I —United States Fish and Wildlife Service, Department of the Interior

Subchapter B —Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants

Part 22 Eagle Permits

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PART 22—EAGLE PERMITS

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

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

Subpart A—Introduction and General Requirements

Source: 39 FR 1183, Jan. 4, 1974, as amended at 87 FR 884, Jan. 7, 2022 unless otherwise noted.

§ 22.2 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; Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.4 Scope of this part.

(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 § 22.60 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. Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.6 Definitions.

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

Alternate nest means one of potentially several nests within a nesting territory that is not an in-use nest at the current time. When there is no in-use nest, all nests in the territory are alternate nests.

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.

Compatible with the preservation of the bald eagle or the golden eagle means consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species.

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 management unit (EMU) means a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald eagles or golden eagles.

- (1) The Atlantic EMU is Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.
- (2) The Mississippi EMU is Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.
- (3) The Central EMU is Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas; portions of Colorado, New Mexico, and Wyoming east of the Continental Divide; and portions of Montana east of Hill, Chouteau, Cascade, Meagher, and Park Counties.
- (4) The Pacific EMU is Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington; portions of Colorado, New Mexico, and Wyoming west of the Continental Divide; and in Montana Hill, Chouteau, Cascade, Meagher, and Park Counties and all counties west of those counties.
- (5) An EMU may be further divided between north and south along the 40th Parallel.

Eagle nest means any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. An eagle nest remains an eagle nest until it becomes so diminished, or the nest substrate upon which it is built fails, that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, Tribal, or State eagle biologist.

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.

General permit means a permit that has nationwide or regional standard conditions for a category, or categories, of activities that are substantially similar in nature.

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.

In-use nest means a bald eagle or golden eagle nest that contains one or more viable eggs or dependent young, or, for golden eagles only, has had adult eagles on the nest within the past 10 days during the breeding season.

Incidental take means take that is foreseeable and results from, but is not the purpose of, an activity.

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.

Local area population (LAP) means the bald or golden eagle population within the area of a human activity or project bounded by the natal dispersal distance for the respective species. The LAP is estimated using the average eagle density of the EMU or EMUs where the activity or project is located.

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.

Nesting territory means the area that contains one or more eagle nests within the home range of a mated pair of eagles, regardless of whether such nests were built by the current resident pair.

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 available and capable of being done after taking into consideration existing technology, logistics, and cost in light of a mitigation measure's beneficial value to eagles and the activity's overall purpose, scope, and scale.

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.

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; 81 FR 91550, Dec. 16, 2016; Redesignated at 87 FR 884, Jan. 7, 2022; 89 FR 9958, Feb. 12, 2024]

§ 22.8 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part and assigned OMB Control Number 1018-0167. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

[63 FR 52637, Oct. 1, 1998, as amended at 74 FR 46876, Sept. 11, 2009; 79 FR 43966, July 29, 2014; 81 FR 91550, Dec. 16, 2016; Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.10 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 § 21.4, 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) A permit under this part only authorizes take, possession, and/or transport under the Bald and Golden Eagle Protection Act and does not provide authorization under the Migratory Bird Treaty Act or the Endangered Species Act for the take, possession, and/or transport of migratory birds or endangered or threatened species other than bald or golden eagles.
- (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; 81 FR 91550, Dec. 16, 2016; Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.12 Illegal activities.

- (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.
- (c) Application for a permit does not release you from liability for any take that occurs prior to issuance of, or outside the terms of, a permit.

[64 FR 50472, Sept. 17, 1999. Redesignated and amended at 87 FR 884, Jan. 7, 2022; 89 FR 9958, Feb. 12, 2024]

Subpart B [Reserved]

Subpart C—Eagle Possession Permit Provisions

Source: 39 FR 1183, Jan. 4, 1974, as amended at 87 FR 884, Jan. 7, 2022 unless otherwise noted.

§ 22.50 Eagle scientific and eagle exhibition 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 sent to the Division of Management Authority at the address provided at 50 CFR 2.1(b).
 - (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; 79 FR 43966, July 29, 2014.
Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.60 Eagle Indian religious permits.

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. Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§ 22.70 Eagle falconry permits.

- (a) **Use of golden eagles in falconry.** If you meet the conditions outlined in § 21.82(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 § 22.100, or from a livestock depredation area authorized in accordance with Subpart D—Provisions for Depredating Eagles.

[73 FR 59477, Oct. 8, 2008, as amended at 75 FR 932, Jan. 7, 2010. Redesignated and amended at 87 FR 884, Jan. 7, 2022]
Redesignated and amended at 87 FR 884, Jan. 7, 2022]

§§ 22.80-22.85 [Reserved]

Subpart D—Provisions for Depredating Eagles

Source: 39 FR 1183, Jan. 4, 1974, as amended at 87 FR 885, Jan. 7, 2022 unless otherwise noted.

§ 22.100 Eagle depredation permits.

- (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. Redesignated at 87 FR 884, Jan. 7, 2022; 87 FR 885, Jan. 7, 2022]

§ 22.120 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.

[39 FR 1183, Jan. 4, 1974, as amended at 87 FR 885, Jan. 7, 2022. Redesignated 87 FR 885, Jan. 7, 2022]

§ 22.122 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.

[39 FR 1183, Jan. 4, 1974, as amended at 87 FR 885, Jan. 7, 2022. Redesignated 87 FR 885, Jan. 7, 2022]

Subpart E—Take of Eagles for Other Interests

Source: 89 FR 9958, Feb. 12, 2024, unless otherwise noted.

§ 22.200 Specific permits.

- (a) **Purpose.** Specific permits authorize the take of bald eagles or golden eagles for other interests by activities that are described in the regulations in this subpart. Proponents of projects may apply for a specific permit if they do not meet eligibility criteria for general permits described in—or are conducting an activity not identified in—§ 22.250, § 22.260, § 22.280, or § 22.300. Specific permits may be recommended by the Service or requested by entities that are eligible for but do not want to obtain a general permit.
- (b) **Eligibility.** To qualify for a specific permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300. You must also meet any eligibility requirements identified in the relevant section.

- (1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required permit conditions.
- (2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.
- (3) Applicants may not break down a project into small parts to minimize the activity.
- (4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must first submit a separate application for each project and request the Service determine if it is appropriate to consolidate permits.
- (5) Specific permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.
- (6) Upon receipt of your application for a specific permit, the Service may direct you to apply for a general permit or determine that a permit is not required. The Service will provide a letter of authorization to keep in your records.
- (7) For existing wind energy projects only, projects that are not eligible for a general permit for incidental take of eagles (§ 22.250) may request a Letter of Authorization from the Service to apply for a general permit. The Service will review and determine if eagle risk at the project is consistent with the risk expected for general permits. To request review, you must submit a specific permit application and request a determination for general permit eligibility. Your administration fee will not be refunded to cover the cost of conducting this review. The application fee may be refunded (50 CFR 13.11(d)(1)).

(c) *How to apply for a specific permit.*

- (1) Submit a completed application form as specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a), as applicable, or Form 3-200-71 if the activity does not correspond with a particular permit type. Submit forms to the Regional Director of the region where you will conduct your activity. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address, and the Service will assign the appropriate administering region. You can find the current contact information for Regional Directors in § 2.2 of subchapter A of this chapter.
- (2) Your application must include:
 - (i) A description of the activity that will cause the take to be authorized, including the location, seasonality, and duration of the activity.
 - (A) If applying under § 22.250 for wind energy projects, that description must include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.
 - (B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.

- (C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (e.g., in-use or alternate).
- (ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.
- (iii) An eagle impacts assessment, including eagle activity and eagle use in the project area and a description of methods used to conduct this assessment. If the Service has officially issued or endorsed survey, modeling, take-estimation, or other standards for the activity that will take eagles, you must follow them and include in your application all the information thereby obtained, unless the Service waives this requirement for your application.
- (iv) Implemented and proposed steps to avoid and minimize to the maximum degree practicable, compensate for, and monitor impacts on eagles.
- (v) Alternative actions considered and the reasons why those alternatives are not practicable.
- (vi) Any supplemental information necessary for the Service to make an adequate determination on the application (see § 13.21 of this subchapter).
- (vii) Payment of the required application and administration fees (see § 13.11(d)(4) of this subchapter) for the appropriate fee tier, and, if required, proposed compensatory mitigation plan or eagle credits to be obtained from a Service-approved conservation bank or in-lieu fee program. All compensatory mitigation must comply with the provisions of § 22.220. For incidental take permits issued under §§ 22.250 and 22.260:
 - (A) The Tier 1 application fee is assessed when standardized permit conditions require negligible modifications, additional environmental compliance review is not required, and, if required, fatality estimates require minimal data manipulation.
 - (B) The Tier 2 application fee is assessed for all other specific permit incidental take applications that require 275 staff-hours or fewer for review, including compliance with the procedural requirements of NEPA. The Service may require applicants to enter into a reimbursable agreement to cover the costs above 275 staff-hours.
- (d) **Issuance criteria.** Upon receiving a complete application, the Regional Director will decide whether to issue a permit based on the general criteria of § 13.21 of this subchapter and whether the application meets the following requirements:
 - (1) The applicant is eligible for a specific permit.
 - (2) The take:
 - (i) Is necessary to protect a legitimate interest in a particular locality;
 - (ii) Results from, but is not the purpose of, the activity; and
 - (iii) Cannot practicably be avoided.
 - (3) The amount of take the Service authorizes under the permit is compatible with the preservation of the bald eagle and the golden eagle, including consideration of the effects of other permitted take and other factors affecting bald eagle and golden eagle populations.

- (4) The applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the activity's impacts on eagles. These measures must meet or exceed the requirements of the general permit regulation (§ 22.210), except where not practicable.
 - (5) If compensatory mitigation is required, the applicant has proposed either to implement compensatory mitigation measures that comply with the standards in § 22.220 or secure required eagle credits from a Service-approved conservation bank or in-lieu fee program. Compensatory mitigation must meet or exceed the requirements of the general permit regulation (§ 22.210), except when the Service's evaluation of site-specific data indicates a lower mitigation rate is appropriate.
 - (6) The applicant has proposed monitoring plans that are sufficient to determine the effects on eagle(s) of the proposed activity.
 - (7) The proposed reporting is sufficient for the Service to determine the effects on eagle(s).
 - (8) 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 and whether issuance of a permit would preclude the Service from authorizing take necessary to protect an interest of higher priority. The Service will prioritize safety emergencies, Native American Tribal religious use, and public health and safety.
- (e) **Modifications to your permit.** If the permittee requests substantive amendments (see § 13.11(d)(5) of this subchapter) during the permit tenure, the Service will charge an amendment fee. The Service will charge an amendment fee and an administration fee for permittee-requested substantive amendments that require new analysis, such as modifications that result in re-estimating take, re-evaluating compensatory mitigation requirements, or requiring additional environmental review to comply with procedural requirements under NEPA.
- (f) **Tenure.** The tenure of each permit will be designated on the face of the permit. Specific permits may be valid for a maximum of 30 years. Permit tenure may be less, as restricted by the provisions for specific activities set forth in § 22.250, § 22.260, § 22.280, or § 22.300 or as appropriate to the duration and nature of the proposed activity, including mitigation requirements.

§ 22.210 General permits.

- (a) **Purpose.** General permits authorize the take of bald eagles or golden eagles for other interests that meet the eligibility requirements for general permits set forth in § 22.250, § 22.260, § 22.280, or § 22.300.
- (b) **Eligibility.** To qualify for a general permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300 and meet any additional eligibility requirements identified in the relevant section.
- (1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required permit conditions.
 - (2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.
 - (3) Applicants may not break a project into parts to meet general permit eligibility criteria when the entire project would not be eligible.

- (4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must apply for a specific permit.
- (5) General permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.
- (6) The Service may notify you in writing that you must apply for a specific permit if the Service finds that the project does not comply with the requirements for a general permit.

(c) *How to apply.*

- (1) Register with the Service by submitting the appropriate application form specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a) to Headquarters. You can find the current contact information for Migratory Birds in § 2.1 of subchapter A of this chapter.
- (2) Your application must include:
 - (i) A description of the activity that will cause the take of bald eagles or golden eagles, including the location, and seasonality.
 - (A) If applying under § 22.250 for wind energy projects, include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.
 - (B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.
 - (C) If applying under § 22.280 or § 22.300, include the location of known nests and nest status (*i.e.*, in-use or alternate).
 - (ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.
 - (iii) Description of eagle activity and eagle use in the project area.
 - (iv) Certification that the activity involving the take of eagles authorized by the general permit complies with all other applicable Federal, State, Tribal, and local laws. This includes certifying that the activity for which take is to be authorized by the general permit either does not affect a property that is listed, or is eligible for listing, in the National Register of Historic Places as maintained by the Secretary of the Interior; or that the applicant has obtained, and is in compliance with, a written agreement with the relevant State Historic Preservation Officer or Tribal Historic Preservation Officer that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to the historic property.
 - (v) Payment of required application and administration fees (see § 13.11(d)(4) of this subchapter).
 - (vi) A certification that the applicant agrees to acquire eagle credits, if required, from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of the permit.

- (d) **Issuance criteria.** Upon an applicant registering by submitting an application under paragraph (c) of this section, the Service will automatically issue a general permit to authorize the take requested in the application. In registering, you must certify that you meet the general criteria of § 13.21 of this subchapter and the following issuance criteria:
- (1) You are conducting an activity that qualifies for a general permit.
 - (2) The take:
 - (i) Is necessary to protect a legitimate interest in a particular locality;
 - (ii) Results from, but is not the purpose of, the activity; and
 - (iii) Cannot practicably be avoided.
 - (3) The activity is consistent with the requirements applicable to that activity as specified in § 22.250, § 22.260, § 22.280, or § 22.300.
 - (4) You will implement the general permit conditions applicable to your activity, including required avoidance, minimization, monitoring, and reporting requirements.
 - (5) You will obtain any required eagle credits from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of your permit.
- (e) **Program continuation.** The Service will regularly evaluate whether the take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds, through analysis of the best available information, that the general permit program is not compatible with the preservation of bald eagles or golden eagles, the Service may suspend issuing general permits in all or in part after publishing notification in the FEDERAL REGISTER. The Service may reinstate issuance of general permits after publishing another notification in the FEDERAL REGISTER or by promulgating additional rulemaking. If the Service suspends general permitting, take currently authorized under a general permit remains authorized until expiration of that general permit, unless you are notified otherwise.
- (f) **Tenure.** The tenure of each permit will be designated on the face of the permit. General permits have a maximum tenure of 5 years. Permit tenure may be less, as restricted by the applicable provisions in § 22.250, § 22.260, § 22.280, or § 22.300.

§ 22.215 Conditions of permits.

- (a) Anyone conducting activities under a specific permit (§ 22.200) or general permit (§ 22.210) is subject to the conditions set forth in this section. You must also comply with the relevant conditions set forth in subpart D of part 13 of this subchapter and the conditions of your general or specific permit.
- (1) Your permit will specify the type of take authorized (e.g., incidental take, disturbance, nest take) and may specify the amount, location, or other restrictions on the take authorized. You are not authorized for any take not specified on the face of your permit.
 - (2) Your permit will require implementation of avoidance, minimization, monitoring, and adaptive management measures consistent with the relevant regulations in this subpart E. This may include requirements to:
 - (i) Modify the seasonality, frequency, timing, duration, or other aspects of your activity.
 - (ii) Implement measures to avoid and minimize the take or effects of take on eagles.

- (iii) Monitor to determine the effects of the activity on eagles according to Service-approved protocols.
 - (iv) Implement an adaptive management plan.
- (3) Your permits will specify requirements for reporting and disposing of any discovered eagle remains or injured eagles. Requirements may include:
 - (i) Training onsite personnel and requiring personnel to scan for discovered eagle remains or injured eagles;
 - (ii) Collecting information on discovered eagle remains or injured eagles, including species, condition, discovery date, location, and other information relevant to eagle identification and determining the cause of death or injury;
 - (iii) Reporting discovered eagle remains or injured eagles, including immediate notification and annual reporting; and
 - (iv) Disposition of any discovered eagle remains or injured eagles in accordance with Service instructions, which may include shipping eagles to the National Eagle Repository or other designated facility.
- (4) You must comply with all Service reporting requirements. You must annually report incidental take and disturbance take using Form 3-202-15. You must report nest take using Form 3-202-16. You must submit accurate reports within the required timeline.
- (5) You must comply with all compensatory mitigation requirements in accordance with § 22.220, including any additional requirements contained in § 22.250, § 22.260, § 22.280, or § 22.300.
- (6) You must keep records of all activities conducted under this permit, including those of subpermittees carried out under the authority of this permit (see § 13.46 of this subchapter). You must provide records to the Service upon request.
- (7) By accepting this permit, you are authorizing the Service to:
 - (i) Publish the following information in a public list of permittees: permittee name, permit type, county and State of activity, and effective date range.
 - (ii) Inspect the location and records relating to the activity at the location where those records are kept. Any inspections will occur during regular business hours (see § 13.21(e) of this subchapter).
 - (iii) Provide access to Service staff or contractors as part of participation in the Service's program-wide monitoring. The Service will provide reasonable notice for requests to access sites and negotiate with the permittee about practicable and appropriate access conditions to protect human health and safety and comply with any physical, logistical, or legal constraints.
- (8) You are responsible for ensuring that the activity for which take is authorized complies with all applicable Federal, Tribal, State, and local laws, regulations, and permits. You must comply with all label instructions for handling controlled substances and chemicals, including pesticides.
- (9) Permits are issued to the entity or individual conducting the action.

- (i) The Principal Officer is the chief operating officer responsible for the permit application and any permitted activities. The Principal Officer is responsible for compliance with all conditions of authorization, including the conditions listed here and any permit conditions. The Principal Officer must have the authority to implement all conditions and is legally liable for any subpermittee conducting activities under the permit.
 - (ii) The authority of this authorization may be exercised by subpermittees. A subpermittee is any person who is employed by the authorized entity to conduct the activities specified or any person designated as a subpermittee in writing by the Principal Officer. Subpermittee-designation letters must identify who can conduct what activities and list any restrictions on the dates, locations, or types of activities the subpermittee may conduct.
 - (iii) The Principal Officer is responsible for any subpermittee who is conducting authorized activities. Subpermittees must have the conditions of authorization and, if applicable, a copy of the permit readily available. Subpermittees who are not employees must also have a subpermittee-designation letter.
- (b) The Service may amend, suspend, or revoke a permit issued under this subpart 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 of this subchapter.
- (c) 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.

§ 22.220 Compensatory mitigation.

- (a) Your permit conditions may include a requirement to compensate for the take of eagles.
- (1) Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation, except in circumstances where the action is considered in the best interest of an eagle. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by mitigating an amount equal to or greater than the authorized or expected take. Compensatory mitigation must either reduce another ongoing form of mortality or increase the eagle population of the affected species. Compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation: take) ratio.
 - (2) A permit may require compensatory mitigation when the Service determines, according to the best available information, that the take authorized by the permitted activity is not consistent with maintaining the persistence of the local area population of an eagle species.
- (b) All required compensatory mitigation actions must:
- (1) Be contingent upon application of avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the project's impacts on eagles.
 - (2) Be sited within:
 - (i) The same EMU where the permitted take will occur; or

- (ii) Another EMU if the Service has reliable data showing that the population affected by the take includes individuals that are reasonably likely to use that EMU during part of their seasonal migration.
- (3) If required by the Service, be sited within a specified local area population.
- (4) Use the best available science in formulating, crediting, and monitoring the long-term effectiveness of mitigation measures.
- (5) Be additional to and improve upon the baseline conditions for the affected eagle species in a manner that is demonstrably new and would not have occurred without the compensatory mitigation.
- (6) Be durable and, at a minimum, maintain its intended purpose for as long as required by the mitigation conditions in the permit.
- (7) Include mechanisms to account for and address uncertainty and risk of failure of a compensatory mitigation measure.
- (8) Include financial assurances that the required compensatory mitigation measures will be implemented in full.
- (c) Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers.
 - (1) General permittees meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in paragraph (c)(2) of this section. Third-party mitigation providers (e.g., in-lieu fee programs and conservation banks) obtain Service approval by meeting the requirements to be a mitigation provider as described in paragraph (c)(2) of this section.
 - (2) To obtain approval as a mitigation provider, potential providers must submit a mitigation plan to the Service that demonstrates how the standards set forth in paragraph (b) of this section will be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the locations where projects will be implemented, the EMU and local area population affected, the number of credits provided, and an explanation of the rationale for the number of eagle credits provided. The Service must approve the mitigation plan prior to implementation.

§ 22.250 Permits for incidental take of eagles by wind energy projects.

- (a) **Purpose.** The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind energy projects. Apply using Form 3-200-71.
- (b) **Definition.** The following term used in this section has the meaning set forth in this paragraph (b):
 - Existing project.** Infrastructure that was operational prior to May 13, 2024, as well as infrastructure that was sufficiently far along in the planning process on that date that complying with new requirements would be impracticable, including if an irreversible or irretrievable commitment of resources has been made (e.g., site preparation was already underway or infrastructure was partially constructed).
- (c) **Eligibility for a general permit.** To qualify for a general permit, you must meet the requirements of § 22.210, be located in the contiguous 48 States, not have discovered four or more eagles of one species in the previous 5 years per paragraph (d)(3) of this section, and:

- (1) Be a project applying for a general permit for the first time, and all turbines associated with the project are:
 - (i) At least 2 miles from a golden eagle nest and at least 660 feet from a bald eagle nest; and
 - (ii) Located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species in tables 1 and 2:

Table 1 to Paragraph (c)(1)(ii)—Relative Abundance Value Thresholds for Bald Eagles Throughout the Year

Date range	Bald Eagle relative abundance
1. February 15-May 23	0.821
2. May 24-July 19	0.686
3. July 20-December 20	0.705
4. December 21-February 14	1.357

Table 2 to Paragraph (c)(1)(ii)—Relative Abundance Value Thresholds for Golden Eagles Throughout the Year

Date range	Golden Eagle relative abundance
1. February 8-June 6	0.081
2. June 7-August 30	0.065
3. August 31-December 6	0.091
4. December 7-February 7	0.091

- (2) Be a project currently authorized under a general permit that:
 - (i) Has discovered fewer than four eagles (either eagle remains or injured eagles) of any one species during the previous general permit tenure;
 - (ii) Had no lapse in general-permit coverage; and
 - (iii) Ensures that any turbines not authorized on the previous general permit meet the issuance criteria in paragraph (c)(1) of this section.
- (3) Be an existing project that has received a letter of authorization from the Service (see § 22.200(b)(7)).
- (d) **Discovered eagle provisions for general permits.** You must implement procedures to discover eagle remains and injured eagles in accordance with § 22.215(a)(3) and as required by your permit conditions. In following those protocols:
 - (1) You must include in your annual report the discovery of any eagle remains or injured eagles.

- (2) If you discover eagle remains or injured eagles of three eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of a third eagle and implement adaptive management measures. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit.
- (3) If you discover eagle remains or injured eagles of four eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of the fourth eagle. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit term. The project will remain authorized to incidentally take eagles through the term of the existing general permit but will not be eligible for future general permits. You may instead apply for a specific permit for incidental take at that project. You may request reconsideration of general-permit eligibility by following the review procedures set forth at § 13.29 of this subchapter, including providing the information required in § 13.29(b)(3).
- (4) If the Service conducts monitoring at a wind project, eagle remains or injured eagles discovered by the Service, or Service contractor, are not attributed to the project for the purposes of this paragraph (d), unless the Service determines the eagles were also discovered, or were likely to have been discovered, by required monitoring efforts at the project.
- (e) **Eligibility for a wind energy specific permit.** To qualify for a specific permit, you must meet the requirements of § 22.200. In determining whether to issue a permit, the Service will review the application materials provided, including the eagle impacts assessment. The Service will determine, using the best available data, the expected take of eagles by the proposed activity.
- (f) **Wind energy permit conditions.** The following conditions apply to all general and specific permits. Specific permits may include additional project-specific permit conditions.
 - (1) Develop and implement an adaptive management plan. An adaptive management plan applies the best available science and monitoring to refine project operations and practices. Plans identify criteria for implementation of the mitigation hierarchy, including avoidance, minimization, and compensation to remain consistent with permit conditions and the preservation of eagles.
 - (2) Remove and avoid creating anthropogenic features that increase the risk of eagle take by attracting eagles to the project site or encouraging foraging, roosting, or nesting behaviors.
 - (3) Minimize collision and electrocution risks, including collisions with turbines, vehicles, towers, and power lines.
 - (4) Comply with all relevant regulations and permit conditions in part 21 of this subchapter.
 - (5) Submit required reports to the Service by the applicable deadline.
 - (6) Pay the required application and administration fees (see § 13.11(d)(4) of this subchapter).
 - (7) Implement required compensatory mitigation. You must keep records to document compliance with this requirement and provide them to the Service with your annual report.

- (i) For wind energy specific permits, you must submit a plan to the Service in accordance with § 22.200(c) and implement the compensatory-mitigation requirements included on the face of your permit.
- (ii) For wind energy general permits, you must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project (in cubic kilometers). The hazardous volume of a project is calculated as the number of turbines multiplied by $0.200\pi(d/2)^2$ where d is the diameter of the blades in kilometers. You must obtain eagle credits at the following rates: Atlantic/Mississippi EMUs: 6.02 eagles/km³, Central EMU: 7.46 eagles/km³, and Pacific EMU: 11.12 eagles/km³.

(g) **Tenure of permits.** General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years.

§ 22.260 Permits for incidental take of eagles by power lines.

(a) **Purpose.** The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Apply using Form 3-200-71.

(b) **Definitions.** The following terms used in this section have the meanings set forth in this paragraph (b):

Avian-safe. A power-pole configuration designed to minimize avian electrocution risk by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of the bird. For eagles, this is 150 centimeters of horizontal separation and 100 centimeters of vertical separation. If sufficient separation cannot be provided, exposed parts that conduct electricity must be covered to reduce electrocution risk. If covers are used, they must be maintained in good condition. For conversions from an above-ground line to a buried line, the buried portion is considered “avian-safe.” For purposes of the regulations in this section, “avian-safe” means safe for eagles.

Collision response strategy. A plan that describes the process the permittee will follow to identify whether a collision-caused injury or mortality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

Proactive retrofit strategy. A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified as high risk to eagles and may also include other poles in the service area.

Reactive retrofit strategy. A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (e.g., convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.

Shooting response strategy. A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

(c) **Eligibility for a general permit for incidental take.** To qualify for a general permit, you must meet the requirements of § 22.210.

(d) **General permit conditions for power lines.** Project permittees must:

- (1) Develop a reactive retrofit strategy and implement that strategy following each discovery of an electrocuted eagle. The investigation, documentation, and retrofit design selection must be completed within 90 days of the incident. The retrofit must be implemented within 1 year of the incident and remain effective for 30 years.
- (2) Implement a proactive retrofit strategy to convert all existing-infrastructure-baseline poles to avian-safe. Retrofits must remain effective for 30 years.
 - (i) Investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 50 years. Ten percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.
 - (ii) Non-investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 75 years. Seven percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.
- (3) Implement an eagle collision response strategy. Within 90 days of a collision, you must complete an investigation where the collision occurred by documenting the factors contributing to the collision and identifying appropriate risk-reduction measures. You must implement selected risk-reduction measures at the location of the collision within 1 year of the incident.
- (4) Implement an eagle shooting response strategy. The strategy must include a protocol for immediately contacting the Office of Law Enforcement (in no case more than 72 hours from discovery) when finding eagle remains or an injured eagle near power line infrastructure in circumstances that suggest the eagle may have been shot. If multiple shooting events occur in the service area during the permit tenure, the strategy should describe and provide for the implementation of reasonable shooting-reduction measures.
- (5) Train personnel to scan for eagle remains when onsite and implement internal reporting and recordkeeping procedures for discovered eagles.
- (6) Ensure that all new construction and rebuild or replacement of poles in areas of high risk for eagles is avian-safe unless this requirement would unduly impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources.
- (7) For new construction and rebuild, reconstruction, or replacement projects, incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle-use areas (e.g., nests and winter roosts), accounting for the risk to and population status of the species, unless this requirement would unduly impact human health and safety; require overly burdensome engineering; or have significant adverse effects on biological, cultural, or historical resources.
- (8) Comply with all relevant regulations and permit conditions of part 21 of this subchapter.
- (9) Submit required reports to the Service using Form 3-202-15.
- (10) Pay the required application and administration fee as set forth in § 13.11(d)(4) of this subchapter.

(e) **Specific permit for incidental take –**

- (1) **Eligibility.** Any entity conducting power line activities that meet the requirements of § 22.200 may apply for a specific permit.

- (2) **Conditions.** You must comply with the conditions required in § 22.200. Your permit conditions will include the relevant general-permit conditions from paragraph (d) of this section. Compensatory mitigation may be required when appropriate, including if general permit conditions cannot be met.
- (f) **Tenure of permits.** Power line general permits are valid for 5 years. Specific permits may be valid for up to 30 years.

§ 22.280 Permits for disturbance take of eagles.

- (a) **Purpose.** The regulations in this section authorize the take of bald eagles or golden eagles by disturbance, as defined in § 22.6. Apply using Form 3-200-91. Permits to authorize disturbance associated with hazing eagles or eagle nest take are not authorized under this section. A permit is not required when an activity that may ordinarily disturb eagles is ongoing at the time an eagle pair initiates nesting because the nesting eagles are presumed to tolerate the activity.
- (b) **Eligibility for a general permit for disturbance.** To qualify for a general permit, you must meet the requirements of § 22.210, and your activities must comply with the provisions set forth in paragraphs (b)(1) through (9) of this section. If permanent loss of a territory may occur, a specific permit is recommended because general permits for disturbance do not authorize the permanent loss of a territory. General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. The following activities are eligible for a general permit:
 - (1) Building construction and maintenance within 660 feet of a bald eagle nest.
 - (2) Linear infrastructure construction and maintenance (e.g., roads, rail, trails, power lines, and other utilities) within 660 feet of a bald eagle nest.
 - (3) Alteration of shorelines and water bodies (e.g., shorelines, wetlands, docks, moorings, marinas, and water impoundment) within 660 feet of a bald eagle nest.
 - (4) Alteration of vegetation (e.g., mowing, timber operations, and forestry practices) within 660 feet of a bald eagle nest.
 - (5) Motorized recreation (e.g., snowmobiles, motorized watercraft, etc.) within 330 feet of an in-use bald eagle nest.
 - (6) Nonmotorized recreation (e.g., hiking, camping, fishing, hunting, canoeing, etc.) within 330 feet of an in-use bald eagle nest.
 - (7) Aircraft operation (e.g., helicopters and fixed-wing aircraft) within 1,000 feet of an in-use bald eagle nest.
 - (8) Prescribed burn operations within 660 feet of a bald eagle nest.
 - (9) Loud, intermittent noises (e.g., blasting) within one-half-mile of an in-use bald eagle nest.
- (c) **Eligibility for a specific permit for disturbance.** To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are for disturbance of a golden eagle nest, disturbance of a bald eagle nest by an activity not specified in paragraph (b) of this section, or disturbance of eagles caused by physical or functional elimination of all foraging area within a territory.
- (d) **Disturbance permit conditions.**

- (1) To the maximum degree practicable, implement measures to avoid and minimize nest disturbance, including disturbance due to noise from human activities, visibility of human activities, proximity of activities to the nest, habitat alteration, and any indirect stressors.
 - (2) Avoid activities that may negatively affect the nesting substrate, including the survival of the nest tree.
 - (3) Monitor in-use nests sufficiently to determine whether nestlings have fledged from the nest. Include this information in your annual report.
- (e) **Reporting.** You must submit an annual report using Form 3-202-15. The annual report is due on the date specified on your permit or prior to requesting renewal of your permit, whichever is first.
- (f) **Tenure of permits.** General permits for disturbance issued under the regulations in this section are valid for a maximum of 1 year. The tenure of specific permits for disturbance is set forth on the face of the permit and may not exceed 5 years.

§ 22.300 Permits for take of eagle nests.

- (a) **Purpose.** This section authorizes the take of a bald eagle nest or a golden eagle nest, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure for breeding, when there is no practicable alternative that would protect the interest to be served. Apply using Form 3-200-72.

- (b) **Definitions.** The following terms used in this section have the meanings set forth in this paragraph (b):

Nest take for emergency. Take of an in-use or alternate eagle nest when necessary to alleviate an existing safety emergency for humans or eagles or to prevent a rapidly developing situation that is likely to result in a safety emergency for humans or eagles.

Nest take for health and safety. Take of an eagle nest when the removal is necessary to ensure public health and safety. Nest take for health and safety is limited to in-use nests prior to egg laying or alternate nests.

Nest take for human-engineered structure. Take of an eagle nest built on a human-engineered structure that creates, or is likely to create, a functional hazard that renders the structure inoperable for its intended use. Take is limited to in-use nests prior to egg-laying or alternate nests.

Nest take for species protection. Take of an eagle nest when nest removal is necessary to protect a species federally protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) and included on the List of Endangered and Threatened Wildlife (at § 17.11 of this subchapter). Take is limited to in-use nests prior to egg laying or alternate nests.

Other purposes. Take of an alternate eagle 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 net benefit to eagles.

- (c) **Eligibility for a general permit for nest take.** To qualify for a general permit, you must meet the requirements of § 22.210.

- (1) General permits are available for bald eagle nest take for emergency, nest take for health and safety, or nest take for a human-engineered structure, or, if located in Alaska, other purposes.
- (2) General permits are not available for take of golden eagle nests. General permits are not available for bald eagle nests if removal may result in the complete loss of a territory.

- (3) General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant.
- (d) **Eligibility for a specific permit for nest take.** To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are required for take of a golden eagle nest for any purpose, nest take for species protection, and, except in Alaska, nest take for other purposes.
- (e) **Permits for species protection.** If you are applying for a nest-take permit for species protection, you must:
 - (1) Be a Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern.
 - (2) Include documentation that:
 - (i) Describes relevant management efforts to protect the species of concern.
 - (ii) Identifies and describes how the nesting eagles are a limiting factor to recovery of the species using the best available scientific information and data.
 - (iii) Explains how take of eagle nests is likely to have a positive effect on recovery for the species of concern.
- (f) **Permit conditions for nest take.** Permit conditions may include requirements to:
 - (1) Adjust the timing of your activity to minimize the effects of nest take on eagles.
 - (2) Place an obstruction in the nest or nest substrate.
 - (3) Minimize or deter renesting attempts that would cause the same emergency, safety, or functional hazard.
 - (4) Relocate the nest or provide suitable nesting substrate within the same territory.
 - (5) Remove chicks or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service.
 - (6) If nestlings or eggs are relocated with a nest or to a foster nest, monitor the nest to ensure adults are tending to nestlings or eggs.
 - (7) Monitor the area near the nest removal for one or more seasons to determine the effect on eagles.
 - (8) Submit an annual report using Form 3-202-16.
- (g) **Tenure of permits.** General permits issued under this section are valid until the start of the next breeding season, not to exceed 1 year. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

§ 22.325 Permits for golden eagle nest take for resource recovery operations.

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 alternate golden eagle nests during a resource development or recovery operation if the taking is compatible with the preservation of golden eagles.

- (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) ***Nest and territory occupancy data.***
 - (i) For each golden eagle nest proposed to be taken, the applicant must identify on an appropriately scaled map or plat the exact location of each golden eagle nest in the nesting territory. The map or plat must contain enough details so that each golden eagle nest can be readily located by the Service.
 - (ii) A description of the monitoring that was done to verify that eagles are not attending the nest for breeding purposes, and any additional available documentation used in identifying which nests within the territory were in-use nests in current and past breeding seasons.
 - (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) 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.
 - (7) 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.
 - (8) 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 alternate 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 must comply with any mitigation and monitoring measures determined by the Director to be practicable 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 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) Whether suitable golden eagle nesting and foraging habitat unaffected by the resource development or recovery operation is available to accommodate any golden eagles displaced by the resource development or recovery operation; and
 - (4) Whether practicable mitigation measures compatible with the resource development or recovery operation are available to encourage reoccupation by golden eagles of the resource development or recovery site. Mitigation measures may include, but are not limited to, 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.
- (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; 81 FR 91550, Dec. 16, 2016. Redesignated and amended at 89 FR 9965, Feb. 12, 2024]

§ 22.400 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 November 10, 2009.
- (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 November 10, 2009 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. Redesignated at 87 FR 884, Jan. 7, 2022; 87 FR 885, Jan. 7, 2022. Redesignated and amended at 89 FR 9965, Feb. 12, 2024]