

ELECTRONIC CODE OF FEDERAL REGULATIONS**e-CFR Data is current as of July 30, 2014**

Title 50: Wildlife and Fisheries
PART 22—EAGLE PERMITS
Subpart C—Eagle Permits

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

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

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

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

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

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

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

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

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

(3) You must submit an annual report summarizing the information you obtained through monitoring to the Service every year that your permit is valid and for up to 3 years after completion of

the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed, you must submit the report within 60 days of such date. The Service will make eagle mortality information from annual reports of programmatic permits available to the public. Reporting requirements include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Whether the take is:

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

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

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

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

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

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

(i) Safety emergencies;

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

(iii) Renewal of programmatic take permits;

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

(v) Other interests.

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

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

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

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

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

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

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

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

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

(h) *Permit reviews.* At no more than 5 years from the date a permit is issued, and every 5 years thereafter until a programmatic permit is due to expire in 5 or fewer years, the permittee will compile

and submit to the Service, eagle fatality data or other pertinent information that is site-specific for the project, as required by the permit. The 5-year review will be comparable to the initial review of the permit application. The Service will make eagle-mortality information compiled in 5-year review reports available to the public. As part of the 5-year-review process, we will determine if trigger points specified in the permit have been reached that would indicate that additional conservation measures as described in a permit should be implemented to potentially reduce eagle mortalities, or if additional mitigation measures are needed. Additional post-implementation monitoring may be required to determine the effectiveness of additional conservation measures.

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

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

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

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

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

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

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