



Migratory Bird Management Information: Eagle Rule Questions and Answers

What are the two new permit regulations?

The regulation set forth in 50 CFR § 22.26 provides for issuance of permits to take bald eagles and golden eagles where the taking is associated with but not the purpose of the activity and cannot practicably be avoided. Most take authorized under this section will be in the form of disturbance; however, permits may authorize non-purposeful take that may result in mortality.

The regulation at 50 CFR § 22.27 establishes permits for removing eagle nests where: (1) necessary to alleviate a safety emergency to people or eagles; (2) necessary to ensure public health and safety; (3) the nest prevents the use of a human-engineered structure; or (4) the activity or mitigation for the activity will provide a net benefit to eagles. Only inactive nests may be taken, except in the case of safety emergencies. Inactive nests are defined by the continuous absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days leading up to the time of take.

When will the regulations take effect?

The regulations were published on September 11, 2009. They will take effect on November 10, 2009.

Why are the new regulations needed?

While the bald eagle was listed under the Endangered Species Act (ESA), a permit was available under the ESA to take bald eagles incidental to an otherwise lawful activity. Because there were no regulations under the Bald and Golden Eagle Protection Act to allow disturbance and other incidental take of either species of eagle, these regulations establish permits for activities or projects that result in such take.

How are the two new regulations similar?

The two regulations share the following characteristics:

- Address golden eagles and bald eagles
- Provide that take will only be authorized where it is compatible with the preservation of either of the eagle species. For purposes of the rule, “compatible with the preservation of the eagle” means consistent with the goal of stable or increasing breeding populations
- Provide that a permit will be issued only when the take cannot practicably be avoided
- Contain issuance criteria requiring that, except for safety emergencies, Native American religious needs (under separate regulations) are given first priority if requests for all types of eagle take permits would exceed the level of take that is compatible with the preservation of either species
- Identify that programmatic take that is recurring across a range of times and/or locations will be authorized only where it is unavoidable and occurs despite implementation of comprehensive measures developed in cooperation with the Service.

What is meant by “take” of eagles?

Under the Bald and Golden Eagle Protection Act, “take” is defined as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb.” The new regulations at § 22.26 will cover mostly disturbance. “Disturb” is defined in regulations as “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.”

Do the new regulations allow people to purposefully kill eagles?

No purposeful killing of eagles will be authorized under either new permit type. One of the two new regulations provides for a permit for non-purposeful take of eagles, usually in the form of disturbance, in the course of otherwise lawful activities. The other new regulation establishes a permit for removal of eagle nests under limited circumstances, usually involving safety issues for eagles and/or humans.

Under what circumstances can eagles be taken?

The Bald and Golden Eagle Protection Act authorizes the Secretary to permit take of eagles “necessary for the protection of... other interests in any particular locality.” This statutory language accommodates a broad spectrum of public and private interests (such as utility infrastructure development and maintenance, road construction, operation of airports, commercial or residential construction, resource recovery, recreational use, etc.) that might “take” eagles as defined under the Eagle Act. However, in all cases, the take must be *necessary* to protect the interest, meaning that the interest cannot be protected without taking eagles despite implementation of all practicable measures to avoid and minimize the impact to eagles.

How many eagles could be “taken” annually under the new regulations?

The Service will initially cap permitted bald eagle take at a five percent of their estimated annual regional productivity within each Service region. This approach is consistent with peer-reviewed recommendations used by the Service to manage other raptors. The Service does not expect that demand for the new permits for bald eagles will approach these thresholds in most areas of the United States.

Until the Service has further data to show that golden eagle populations can withstand additional take, it will only consider issuance of new golden eagle take permits: (1) for safety emergencies; (2) through programmatic permits (designed to provide net benefits to eagles); and (3) any other permits that will result in a reduction of ongoing take or a net take of zero. The Service will continue to issue historically-authorized golden eagle take permits under existing permit types at the level of take carried out under those permits (average over 2002-2007).

How are the thresholds set?

Population modeling was used to estimate the likely impact of permitted take at different levels on eagle populations over the long-term. The number of young fledged per nest and survival rates at different age classes (juvenile, sub-adult, and adult) were considered when setting thresholds. Data drawn from scientific literature and from survey and monitoring reports were also used. Our models estimated the maximum number of individuals that could be taken annually under a given set of productivity and survival rate values without reducing the number of breeders in the population in the future.

Which situations and/or entities are granted priority if the demand for permits exceeds the take thresholds?

Listed in order of priority:

- Safety emergencies
- Native American religious use for cultural practices and ceremonies that require eagles be taken from the wild
- Activities necessary to ensure public health and safety
- Resource development or recovery operations (golden eagle nests only)
- Other interests

Is a person who follows the National Bald Eagle Management Guidelines exempt from the requirement to obtain a Bald and Golden Eagle Protection Act permit?

The Guidelines are basic recommendations the Service has provided to help minimize the potential for disturbing bald eagles. However, the recommendations do not address every type of activity. Furthermore, variable on-site conditions, the temperament of individual eagles, and other factors, make it difficult to predict outcomes with confidence. An activity that is generally assessed as likely to disturb eagles will not always disturb them, and the presence of a number of variables may affect the likelihood that take will occur. Because the Bald and Golden Eagle Protection Act requires that a permit be issued for any bald eagle take to be authorized, the Service cannot “exempt” any take from the permit requirement.

Is post-activity monitoring required?

Depending on the magnitude of the anticipated disturbance, permittees may be required to provide basic post-activity monitoring by determining whether the nest site, communal roost, or important foraging area continues to be used by eagles for up to three years following completion of the activity for which the permit was issued.

What would the Service do with information gathered from monitoring done by the permittee?

The Service can use the information to help assess whether future activities may result in loss of one or more eagles, a decrease in productivity of bald or golden eagles, and/or the permanent abandonment or loss of a nest site, communal roost site, or important foraging area. This information would allow the Service to refine recommendations in future versions of eagle management guidelines regarding buffer distances, timing of activities, and other practices that minimize take of eagles. The data also may enable the Service to adjust the number of annual permits available in a Service region.

What mitigation measures are required?

All permittees will be required to avoid and minimize the potential for take to the degree practicable, and for programmatic permits, to the point where take is unavoidable. Additional compensatory mitigation may be required for: (1) programmatic take and other multiple take authorizations; (2) disturbance associated with the permanent loss of a breeding territory or important traditional communal roost site; or (3) as necessary to offset impacts to the local area population.

Compensatory mitigation programs under 50 CFR § 22.26 permits may vary. Acquisition or protection of eagle habitat at an onsite or offsite location is one common form of compensatory mitigation. Compensatory mitigation can also be provided through mitigation funds to a third party that is responsible for habitat protection or restoration, such as another federal agency, a state or local government agency, or a conservation organization. Using mitigation funds for purposes other than habitat acquisition or protection – such as eagle surveys or other eagle-related research – might also serve as viable mitigation. Additional types of mitigation that can offset negative impacts to eagles may also be considered.

What is the relationship between the new regulations and the draft Bald Eagle Post-Delisting Monitoring Plan (PDMP)?

The PDMP is a national-level monitoring plan designed to detect declines that would merit reconsideration of the bald eagle as threatened or endangered under the Endangered Species Act. It only relates to bald eagles and not golden eagles. The population trends on which the Service would base take thresholds under the new regulations will be smaller in scale and at levels that can't be detected in the PDMP.

How does the Final Rule affect Native Americans?

The new regulations do not make any changes to how Native Americans obtain permits for feathers from the National Eagle Repository. The regulations do give higher priority – if demand exceeds take thresholds – to permit requests for Native American religious ceremonies that require eagles taken from the wild.

In accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, and the Service's Native American Policy, the Service will consult with Native American tribal governments when actions may affect their lands, resources, or ability to self-govern. An eagle nest or the presence of an eagle may be considered a contributing feature or element of cultural or religious significance, or an eagle nest may be considered a sacred site. Issuance of take permits for eagles may, on a case-by-case basis, also require consultation in compliance with Section 106 of the National Historic Preservation Act.

Do the new regulations address depredation?

Yes, these revisions will streamline the process of obtaining and retaining authorizations to haze eagles at airports to protect human (and eagle) safety. The rulemaking amends existing eagle depredation permit regulations at 50 CFR 22.23 to extend permit tenure from 90 days to up to five years for purposes of hazing eagles, to enable issuance of permits that combine programmatic authorizations provided under § 22.23 and the new permit regulations. The rule also clarifies that § 22.23 can be used to address human health and safety.

What additional documents, besides the rule itself, will affect how the new regulations are implemented?

The general measures for implementation of the rule can be found in the preamble to the Final Rule, the Final Environmental Assessment and the decisions that are contained in the Finding of No Significant Impact (FONSI). Together, the three documents explain how the Service intends to implement the new rule. Further implementation guidance for the rule is being developed, and will be available for public review and comment in the near future.