

## Questions and Answers on New Regulations to “Take” Eagles

### **What are the 2 new permitted take regulations?**

The regulation set forth in section § 22.26 governs the 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 section § 22.27 establishes the issuance of 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.

### **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.”

### **When will the new regulations take effect?**

The regulations will take effect 60 days after the date of publication in the Federal Register.

### **How are the two new regulations similar?**

The two regulations share the following characteristics:

- Both address golden eagles and bald eagles.
- Provides 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.
- Proves that a permit will be issued only when the take cannot practicably be avoided.
- Required issuance criteria ensures that, except for safety emergencies, Native American religious needs (under separate, pre-existing 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 the bald eagle or the golden eagle.
- Identifies programmatic take – take that is recurring across a range of times and conditions of locations – will be authorized only where it is unavoidable and occurs despite implementation of comprehensive measures developed in cooperation with the Service to reduce the take below current levels.

### **Why is this rule needed?**

The new permit program has the potential to provide significant benefits to eagles, because it requires permittees to conduct advanced conservation practices to benefit eagles. While the bald eagle was listed under the Endangered Species Act (ESA) throughout the United States, a permit was available under the ESA to take eagles incidental to an otherwise lawful activity. Because there were no provisions for issuing permits under the Eagle Act for activities that may disturb or incidentally take either species of eagle, these regulations provide greater flexibility for relevant activities or projects. The growing population of bald eagles, in particular, could significantly curtail human activities if such permits were not available.

### **Does this rule 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 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.

### **How many eagles could be “taken” annually?**

Rather than set a specific number of eagles that could be “taken” annually, 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 the recommendations made in a peer-reviewed scientific paper authored by Service biologists and used by the Service to manage capture of wild raptors for falconry (Millsap, B. A. and G. T. Allen 2006. Effects of falconry harvest on wild raptor populations in the United States: theoretical considerations and management recommendations. Wildlife Society Bulletin 34:1392-1400).

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); 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).

### **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. The population trends on which the Service would base take thresholds under the new regulations will be smaller in scale and at levels that are below the detectability of the PDMP.

### **Under what circumstances can eagles be taken?**

The Eagle 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.

### **Which situations and/or entities are granted priority should demand for permits exceed 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 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 3 years following completion of the activity for which the permit was issued.

### **What will the Service do with information gathered from permittee monitoring reports?**

This information will 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 Service can also assess how future activities will 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. Reporting data may also 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 off-set impacts to the local area population.

Compensatory mitigation programs under § 22.26 permits may be as varied as the projects they address. A common form of compensatory mitigation is acquisition or protection of eagle habitat at an onsite or offsite location. 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 – e.g., eagle surveys or other eagle-related research – might also serve as viable mitigation. Additional types of mitigation will also be considered.

### **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 only aspect of the new regulations that pertains to permits for Native American religious use is the rule's requirement that eagle take for Native

American religious ceremonies that require eagles be taken from the wild will be given higher priority than permits issued under the new regulations if demand exceeds take thresholds (except for safety emergencies).

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 with tribes 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 5 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). Reading all three documents will provide a more complete understanding of how the Service intends to implement the new rule. Further implementation guidance for the rule is currently being developed in partnership with State and tribal representatives, and will be made available for public review and comment in the near future.