

§ 22.28

50 CFR Ch. I (10–1–10 Edition)

(4) Whether issuing the permit would preclude the Service from authorizing another take necessary to protect an interest of higher priority, as set forth in paragraph (e)(5) of this section;

(5) For take that is not necessary to alleviate an immediate safety emergency, whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal; and

(6) 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.

(e) *Required determinations.* Before issuing a permit under this section, 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 the bald eagle or the golden eagle;

(2) For inactive nests:

(i) The take is necessary to ensure public health and safety;

(ii) The nest is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use; or

(iii) The take is necessary to protect a legitimate interest in a particular locality, and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles;

(3) For active nests, the take is necessary to alleviate an immediate threat to human safety or eagles;

(4) There is no practicable alternative to nest removal that would protect the interest to be served; and

(5) Issuing the permit will not 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 nest-take permits;

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

(v) Resource development or recovery operations (under § 22.25, for golden eagle nests only);

(vi) Other interests.

(6) For take that is not necessary to alleviate an immediate threat to human safety or eagles, we additionally must find that suitable nesting and foraging habitat is available to the area nesting population of eagles to accommodate any eagles displaced by the nest removal.

(f) *Tenure of permits.* The tenure of any permit to take eagle nests under this section is set forth on the face of the permit and will not be longer than 5 years.

[74 FR 46877, Sept. 11, 2009]

§ 22.28 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 the effective date of 50 CFR 22.26.

(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 the effective date of 50 CFR 22.26 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 modi-

fications 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]

Subpart D—Depredation Control Orders on Golden Eagles

§ 22.31 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.

§ 22.32 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,