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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 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 im-

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pects to eagles, and mitigation measures, but will not exceed 5 years.

[74 FR 46877, Sept. 11, 2009]

### § 22.27 Removal of eagle nests.

(a) *Purpose and scope.* (1) A permit may be issued under this section to authorize removal or relocation of:

(i) An active or inactive nest where necessary to alleviate a safety emergency;

(ii) An inactive eagle nest when the removal is necessary to ensure public health and safety;

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

(iv) An inactive 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 clear and substantial benefit to eagles.

(2) Where practicable and biologically warranted, the permit may require a nest to be relocated, or a substitute nest provided, in a suitable site within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a threat to safety. However, we may issue permits to remove nests that we determine cannot or should not be relocated. The permit may authorize take of eggs or nestlings if present. The permit may also authorize the take of adult eagles (e.g., disturbance or capture) associated with the removal or relocation of the nest.

(3) A programmatic permit may be issued under this section to cover multiple nest takes over a period of up to 5 years, provided the permittee complies with comprehensive measures that are developed in coordination with the Service, designed to reduce take to the maximum degree technically achievable, and specified as conditions of the permit.

(4) This permit does not authorize intentional, lethal take of eagles.

(b) *Conditions.* (1) Except for take that is necessary to alleviate an immediate threat to human or eagle safety, only inactive eagle nests may be taken under this permit.

(2) When an active nest must be removed under this permit, any take of nestlings or eggs must be conducted by a Service-approved, qualified, and permitted agent, and all nestlings and viable eggs must be immediately transported to foster/recipient nests or a rehabilitation facility permitted to care for eagles, as directed by the Service.

(3) Possession of the nest for any purpose other than removal or relocation is prohibited without a separate permit issued under this part authorizing such possession.

(4) You must submit a report consisting of a summary of the activities conducted under the permit to the Service within 30 days after the permitted take occurs, except that for programmatic permits, you must report each nest removal within 10 days after the take and submit an annual report by January 31 containing all the information required in Form 3-202-16 for activities conducted during the preceding calendar year.

(5) You may be required to monitor the area and report whether eagles attempt to build or occupy another nest at another site in the vicinity for the duration specified in the permit.

(6) You may be required under the terms of the permit to harass eagles from the area following the nest removal when the Service determines it is necessary to prevent eagles from re-nesting in the vicinity.

(7) 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—and for permits issued under paragraph (a)(1)(iv) of this section, to provide a net benefit to—the regional eagle population.

(8) The Service may amend 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.

(9) 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.

(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.

(c) *Applying for a permit to take eagle nests.* (1) If the take is necessary to address an immediate threat to human or eagle safety, contact your local U.S. Fish and Wildlife Service Regional Migratory Bird Permit Office (<http://www.fws.gov/permits/mbpermits/addresses.html>) at the earliest possible opportunity to inform the Service of the emergency.

(2) Your application must consist of a completed application Form 3-200-72 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.

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

(1) Whether the activity meets the requirements of paragraph (a)(1) of this section;

(2) 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;

(3) Whether there is a practicable alternative to nest removal that will protect the interest to be served;

(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

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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;