

ATTACHMENT #9

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)

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[Browse Previous](#) | [Browse Next](#)

PART 22—EAGLE PERMITS**Section Contents****Subpart A—Introduction**

- [§ 22.1 What is the purpose of this part?](#)
- [§ 22.2 What activities does this part apply to?](#)
- [§ 22.3 Definitions.](#)
- [§ 22.4 Information collection requirements.](#)

Subpart B—General Requirements

- [§ 22.11 What is the relationship to other permit requirements?](#)
- [§ 22.12 What activities are illegal?](#)

Subpart C—Eagle Permits

- [§ 22.21 What are the requirements concerning scientific and exhibition purpose permits?](#)
- [§ 22.22 What are the requirements concerning permits for Indian religious purposes?](#)
- [§ 22.23 What are the requirements for permits to take depredating eagles and eagles that pose a risk to human or eagle health and safety?](#)
- [§ 22.24 Permits for falconry purposes.](#)
- [§ 22.25 What are the requirements concerning permits to take golden eagle nests?](#)
- [§ 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.](#)
- [§ 22.27 Removal of eagle nests.](#)
- [§ 22.28 Permits for bald eagle take exempted under the Endangered Species Act.](#)

Subpart D—Depredation Control Orders on Golden Eagles

- [§ 22.31 Golden eagle depredations control order on request of Governor of a State.](#)
- [§ 22.32 Conditions and limitations on taking under depredation control order.](#)

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

Source: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction



§ 22.1 What is the purpose of this part?



This part controls the taking, possession, and transportation within the United States of bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) and their parts, nests, and eggs for scientific, educational, and depredation control purposes; for the religious purposes of American Indian tribes; and to protect other interests in a particular locality. This part also governs the transportation into or out of the United States of bald and golden eagle parts for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, trade, or barter of bald and golden eagles, or their parts, nests, or eggs is prohibited.

[64 FR 50472, Sept. 17, 1999, as amended at 73 FR 29083, May 20, 2008]

§ 22.2 What activities does this part apply to?



(a)(1) You can possess or transport within the United States, without a Federal permit:

(i) Any live or dead bald eagles, or their parts, nests, or eggs that were lawfully acquired before June 8, 1940; and

(ii) Any live or dead golden eagles, or their parts, nests, or eggs that were lawfully acquired before October 24, 1962.

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald or golden eagles, or their parts, nests, or eggs of these lawfully acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired dead bald or golden eagles, their parts, nests, or dead eagles, if you acquire a permit issued under §22.22 of this part.

(3) No exemption from any statute or regulation will apply to any offspring of these pre-act birds.

(4) You must mark all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs as directed in §14.81 of this subchapter. The markings must contain the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the number of each species.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also part 13 of this subchapter).

[39 FR 1183, Jan. 4, 1974, as amended at 64 FR 50472, Sept. 17, 1999]

§ 22.3 Definitions.



In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part 22:

Advanced conservation practices means scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.

Area nesting population means the number of pairs of golden eagles known to have a nesting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

Communal roost site means an area where eagles gather repeatedly in the course of a season and shelter overnight and sometimes during the day in the event of inclement weather.

Cumulative effects means the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions.

Disturb means 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.

Eagle nest means any readily identifiable structure built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction.

Export for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs out of the United States when accompanied with a valid transportation permit.

Foraging area means an area where eagles regularly feed during one or more seasons.

Import for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs into the United States when accompanied with a valid transportation permit.

Important eagle-use area means an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles.

Inactive nest means a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present. An inactive nest may become active again and remains protected under the Eagle Act.

Indirect effects means effects for which a proposed action is a cause, and which may occur later in time and/or be physically manifested beyond the initial impacts of the action, but are still reasonably likely to occur.

Maximum degree achievable means the standard at which any take that occurs is unavoidable despite implementation of advanced conservation practices.

Necessary to ensure public health and safety means required to maintain society's well-being in matters of health and safety.

Nesting attempt means any activity by golden eagles involving egg laying and incubation as determined by the presence of an egg attended by an adult, an adult in incubation posture, or other evidence indicating recent use of a golden eagle nest for incubation of eggs or rearing of young.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of any State or political subdivision of a State.

Practicable means capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles, the following three things: the cost of remedy compared to proponent resources; existing technology; and logistics in light of overall project purposes.

Programmatic permit means a permit that authorizes programmatic take. A programmatic permit can cover other take in addition to programmatic take.

§ 22.27 Removal of eagle nests.

[↑ top](#)

(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 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]