

CALIFORNIA-OZONE (8-HOUR STANDARD)

| Designated area | Designation ^a | | Classification | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------|-------------------|--------------------|
| | Date ¹ | Type | Date ¹ | Type |
| Ventura County, CA: Ventura County (part)—That part of Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands. Remainder of County | | Nonattainment | 6/19/08 | Subpart 2/Serious. |
| | | Unclassifiable/Attainment. | | |

^a Includes Indian Country located in each county or area, except as otherwise specified.*
¹ This date is June 15, 2004, unless otherwise noted.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[FWS-R9-MB-2008-0057; 91200-1231-9BPP-L2]

RIN 1018-AV11

Authorizations Under the Bald and Golden Eagle Protection Act for Take of Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: These final regulations provide two mechanisms to authorize take under the Bald and Golden Eagle Protection Act (Eagle Act) by certain persons who have been authorized under the Endangered Species Act (ESA) to take bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*).

DATES: This rule goes into effect on June 19, 2008.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mailstop 4107, Arlington, VA 22203-1610; or 703-358-2329.

SUPPLEMENTARY INFORMATION:

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits the take of bald eagles and golden eagles unless pursuant to regulations (and in the case of bald

eagles, take can be authorized only under a permit). While the bald eagle was listed under the ESA (16 U.S.C. 1531 et seq.), we authorized incidental take of bald eagles through take statements under ESA section 7 and through section 10 incidental take permits (50 CFR 402, Subparts A and B; 50 CFR 17.22(b) and 17.32(b)). Those authorizations were issued with assurances that the Service would exercise enforcement discretion in relation to violations of the Eagle Act (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA). Since the bald eagle has been removed from the ESA's List of Endangered and Threatened Wildlife throughout most of its range (see 72 FR 37345, July 9, 2007 and 73 FR 23966, May 1, 2008), the prohibitions of the ESA no longer apply except to the Sonoran Desert nesting bald eagle population. However, the potential for human activities to violate Federal law by taking bald eagles (and golden eagles) remains under the prohibitions of the Eagle Act and the MBTA. The Eagle Act defines the "take" of an eagle to include a broad range of actions: "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." "Disturb" is defined in our regulations at 50 CFR 22.3 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." Many actions that were considered likely to incidentally "take" (harm or harass) eagles under the ESA may also "take" eagles under the Eagle Act, as those

terms have been defined by statute and regulation.

The ESA provides broad substantive and procedural protections for listed species but at the same time allows significant flexibility to permit activities that affect listed species. In particular, sections 7(b)(4) and 10(a)(1)(B) of the ESA provide that we may authorize the incidental take of listed wildlife in the course of otherwise lawful activities. Nationwide, since 2002, the Service issued an average of 52 incidental take statements per year that covered anticipated take of bald eagles under the ESA's section 7 (50 CFR 402, Subpart B). During that same 5-year period, we issued nine incidental take permits that included bald eagles under the ESA's section 10(a)(1)(B). A total of 126 such incidental take permits have been issued for bald eagles and 12 incidental take permits include golden eagles as covered, non-listed species (50 CFR 17.22(b) and 17.32(b)). The statutory and regulatory criteria for issuing those ESA authorizations included minimization, mitigation, or other conservation measures that also satisfied the statutory mandate under that Eagle Act that authorized take must be compatible with the preservation of the bald or golden eagle. Our practice was to provide assurances in each section 7 incidental take statement and section 10 permit that we would not refer the incidental take of a bald eagle for prosecution under the Eagle Act, if the take was in compliance with the terms and conditions of a section 7(b)(4) incidental take statement or the conditions of a section 10(a)(1)(B) incidental take permit.¹ Now that the

¹ Compliance with the conditions of a section 10(a)(1)(B) permit entails compliance with the terms of the associated Habitat Conservation Plan and Implementing Agreement (if applicable).

bald eagle is delisted in most of the U.S., new mechanisms are needed to address take pursuant to the Eagle Act.

The Eagle Act provides that the Secretary of the Interior may authorize certain otherwise-prohibited take of eagles through promulgation of regulations. The Secretary is authorized to prescribe regulations permitting the "taking, possession, and transportation of [bald or golden eagles] * * * for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or * * * for the protection of wildlife or of agricultural or other interests in any particular locality," provided such permits are "compatible with the preservation of the bald eagle or the golden eagle" (16 U.S.C. 668a). In accordance with this authority, the Secretary has previously promulgated Eagle Act permit regulations for scientific and exhibition purposes (50 CFR 22.21), for Indian religious purposes (50 CFR 22.22), for take of depredating eagles (50 CFR 22.23), for possession of golden eagles for falconry purposes (50 CFR 22.24), and for take of golden eagle nests that interfere with resource development or recovery operations (50 CFR 22.25).

We have not previously promulgated permit regulations to implement the statutory provision which allows the Secretary to authorize take "for the protection of * * * other interests in any particular locality." This statutory authority accommodates the 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 have received authorization to take eagles under the ESA.

Shortly before delisting the bald eagle, we proposed regulations to permit take under the Eagle Act where the take is associated with otherwise lawful activities, and to permit removal of eagle nests for emergency safety needs (see 72 FR 31141, June 5, 2007). That proposed rule also included provisions we are finalizing today under this rule to extend Eagle Act take authorizations to persons previously authorized to take eagles under the ESA, provided the take occurs in compliance with the terms of that ESA authorization. Because the authorizations associated with this final rulemaking are categorically excluded from the requirement to prepare an environmental assessment under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) under Departmental procedures and we find it

is appropriate to have these authorizations available at the earliest practical date, we have bifurcated the proposed rule and are finalizing the ESA-related provisions ahead of the remainder of the proposal. That remainder is currently undergoing a NEPA analysis which we intend to complete later this year.

Summary of the Rulemaking

Eagle take that was prohibited under the ESA is, in many instances, also prohibited under the Eagle Act. Both statutes define take to prohibit killing, wounding, pursuing, shooting, capturing, and collecting the species they protect (16 U.S.C. 668c; 16 U.S.C. 1532(19)). The ESA definition of "take" additionally includes the terms "harm" and "harass," while the Eagle Act includes "molest or disturb" in its definition of "take." The regulatory definitions of "harm," "harass," and "disturb" differ; however they do overlap in several ways, with the result that an action considered likely to incidentally take eagles under the ESA may also take eagles under the Eagle Act.

Under this final rule, we extend Eagle Act authorizations to holders of existing ESA authorizations as seamlessly as is possible under the applicable laws. There are two mechanisms through which these new regulations provide Eagle Act authorization. First, the rule establishes regulatory provisions under 50 CFR 22.11 to provide take authorization under the Eagle Act to ESA section 10(a)(1)(B) permittees where the bald eagle is covered in a Habitat Conservation Plan (HCP) or the golden eagle is covered as a non-listed species, as long as the permittee is in full compliance with the terms and conditions of the ESA permit. This provision will also apply to the take of bald eagles and golden eagles specifically authorized in any future HCPs, whether or not eagles are then listed under the ESA. This provision also extends Eagle Act take authorization to ESA permits for Scientific Purposes and permits for Enhancement of Propagation or Survival (i.e., Recovery permits) issued under ESA section 10(a)(1)(A).

Second, the rule establishes a new permit category to provide expedited Eagle Act permits to entities authorized to take bald eagles through section 7 incidental take statements. Permits are not available under this new permit for golden eagles because as a non-listed species no take of golden eagles was previously authorized under the ESA's section 7.

Theoretically, this new permit category also may be used to extend Eagle Act take authorization to take exempted under section 7 of the ESA in the future where the bald eagle or golden eagle is protected under the ESA (e.g., for take of Sonoran Desert nesting bald eagles, or if bald eagles or golden eagles become ESA-listed in any portion of their respective ranges). However, in addition to the regulations being finalized herein, we intend to finalize regulations later this year to establish a new permit that will authorize take that is associated with, but not the purpose of, an action (proposed 50 CFR 22.26) (see 72 FR 31141, June 5, 2007). As part of that subsequent rule, we intend to amend the regulations we are promulgating today in a manner to restrict their use to section 7 incidental take statements issued prior to the date this later rule becomes effective. For any incidental take exempted under ESA section 7 that is authorized after the date § 22.26 becomes effective and that also constitutes take under the Eagle Act, the only permit that would be available to provide Eagle Act take authorization would be the new permit to be created by a final version of 50 CFR 22.26. Although the reasonable and prudent measures and associated terms and conditions of section 7 incidental take statements satisfy the statutory mandate of the Eagle Act, once a permit becomes available to authorize eagle take that is not associated with an ESA take authorization, for purposes of accountability and consistency, the same process and procedures should be used to authorize take under the Eagle Act regardless of whether it was also exempted under ESA section 7. Therefore, except for take authorized through ESA section 10 permits (which will confer authority to take under both the ESA and the Eagle Act under the new provision at 50 CFR 22.11), any take we authorize that is associated with, but not the purpose of an activity, would be provided under a single regulatory authority, 50 CFR 22.26, once it becomes available, rather than 50 CFR 22.28. Persons and entities permitted under § 22.28 may apply for a permit under § 22.26 when it becomes available.

The reason why different authorizing mechanisms are needed to extend Eagle Act take authorization to take authorized under ESA section 10 versus take exempted under ESA section 7 is that the Eagle Act requires that any bald eagle take to be authorized must be (1) pursuant to regulations, (2) authorized upon procurement of a permit from the Secretary of the Interior, and (3)

compatible with the preservation of the bald eagle. We now find that the previously issued ESA take authorizations are compatible with the preservation of the eagle, and we are able to extend Eagle Act take authorization to holders of ESA permits through this regulation without the need for an additional permit because (1) this regulation satisfies the Eagle Act statutory mandate that take be authorized by regulation, and (2) a permit to take eagles has been procured from the Secretary of the Interior. In contrast, the take authorizations provided under section 7 of the ESA were not provided through a permit, and so the holders of those authorizations cannot be extended an Eagle Act authorization without a permit being procured prior to such taking.

Description of the Rulemaking

New Provisions at 50 CFR 22.11 To Extend Eagle Act Take Authorization to Permittees Authorized To Take Eagles Under the ESA

Section 10(a)(1)(B) of the ESA authorizes incidental take permits for activities included in an HCP. One-hundred and twenty-six such permits cover bald eagles. Twelve permits authorize incidental take of golden eagles for ESA purposes (should the golden eagle be listed in the future) by their inclusion as covered non-listed species. Our practice was to issue these permits with a statement of enforcement discretion from the Service that provided assurances that the Service would not refer any take of bald or golden eagles for prosecution under the Eagle Act, as long as the take was in full compliance with the terms and conditions of the permit and HCP. While the bald eagle was protected under the ESA, these assurances also conveyed the Federal Government's commitment to make no additional conservation demands of permittees who were fully implementing the conservation measures within their HCPs.

Now that the bald eagle has been delisted in most portions of its range, all of these ESA permits will continue to provide viable authorizations under the ESA, should the affected eagle population become listed under the ESA in the future. The only change is that the bald eagle became a covered non-listed species under HCPs where it was delisted. However, none of these incidental take permits provided explicit authorization for take under the Eagle Act.

The conservation measures required to cover the bald eagle and the golden eagle under previously issued ESA incidental take permits (which were crafted to safeguard federally listed species, including those that may be listed in the future) are "compatible with the preservation of the bald eagle and the golden eagle" as required by the Eagle Act. Therefore, a separate Eagle Act permit is not required under this final rule. This rule amends the Eagle Act regulations at 50 CFR 22.11 to extend Eagle Act authorization for the take authorized under the ESA to entities who continue to operate in full compliance with the terms and conditions of permits issued under ESA section 10. Failure to abide by the section 10 permit requirements that pertain to eagles may, however, potentially void the Eagle Act authorization for these permits and result in permit revocation.

This final regulation diverges moderately from what we proposed in our June 2007 proposed rule (72 FR 31141). In the proposed rule, we suggested that section 10 incidental take permittees whose permits covered bald eagles as the only ESA-listed species would need to follow the same procedures as persons authorized under section 7 and apply for an expedited Eagle Act permit, rather than be covered by the new provision we are adding to 50 CFR 22.11. Although more cumbersome, we proposed that a new permit would be necessary because we thought that the ESA permit might be effectively "null and void," since it no longer covered any species listed under the ESA.

However, after further consideration, we now conclude that a single-species HCP does not become null and void if the species is delisted, but instead is ineffective for purposes of providing ESA authorization as long as the species remains off the List of Endangered and Threatened Wildlife. However, should the species be re-listed within the tenure of the permit, the authorization would become effective (in much the same way that a permit under 50 CFR 17.22(d) that covers a Candidate species included in a Candidate Conservation Agreement becomes valid if the species becomes listed). Based on this approach, the seven section 10 permits that covered bald eagles as the only ESA-listed species are not null and void and are eligible to be treated in the same manner as section 10 incidental take permits that cover bald eagles among additional listed species, because both satisfy the Eagle Act permit requirement that a permit be procured before a bald eagle may be taken. Therefore the new

provision at 50 CFR 22.11 will cover ESA section 10 incidental take permits that included eagles as the only ESA-listed species without the need for issuance of an additional Eagle Act permit.

The new provision at 50 CFR 22.11 also applies to take covered under *future* ESA section 10 permits associated with HCPs for multiple species that include bald eagles or golden eagles as covered species, whether or not eagles are listed under the ESA.

ESA Section 10(a)(1)(A) Permits

Take of bald eagles also was authorized under the ESA's section 10(a)(1)(A) permits for Scientific Purposes and permits for Enhancement of Propagation or Survival (i.e., Recovery permits). Many of these permits specifically provided take authorization under the Eagle Act in addition to the ESA authorization, and those permits will continue to serve as valid take authorizations under the Eagle Act. However, some section 10(a)(1)(A) permits provided take authority only under the ESA and these permits became inactive when the bald eagle was delisted. The new provision at § 22.11 will extend Eagle Act take authorization to the holders of those permits for the duration of the term of the section 10(a)(1)(A) permit, or until the amount or level of take authorized has been met.

New Permit Provisions Under 50 CFR 22.28

As discussed above, the Eagle Act provides that bald eagles may not be taken unless a permit is first procured from the Secretary of the Interior. The new provisions at § 22.11 that extend Eagle Act coverage to holders of section 10 permits do not apply to section 7 incidental take statements, since those authorizations were not provided via issuance of a permit. This final rule establishes a process to issue Eagle Act permits to entities that were subject to ESA section 7 incidental take authorizations and for which there may continue to be a need to take eagles in the future.

Through the ESA section 7 process, when the Service concludes that the agency action will not cause jeopardy or adverse modification, we include an incidental take statement that specifies the amount or extent of incidental take that will be caused by the agency's action and which is exempted from the ESA's take prohibitions. The incidental take statement includes reasonable and prudent measures and associated terms and conditions to which the agency (or

any applicant or grantee of the agency) must adhere in order for the take exception to apply (see 16 U.S.C. 1536(o)(2)). Those reasonable and prudent measures and associated terms and conditions in the incidental take statement also satisfy the statutory mandate of the Eagle Act that authorized take must be compatible with the preservation of the eagle. Therefore, criteria for issuing these expedited permits are limited to (1) whether the action agency (or any applicant or grantee of the agency) is implementing the action in full compliance with the terms and conditions of the ESA section 7 incidental take statement with respect to the take of eagles, and (2) whether new information is available to indicate that such take is not compatible with the preservation of the eagle (e.g., that take was or will be exceeded, or the activity will affect eagles in a manner or to an extent not previously considered, or the activity will be modified).

For ESA section 7 take statements issued before the date this rule takes effect, we will not refer such take for prosecution under the Eagle Act during an interim period that will afford the holders of the section 7 take statements a reasonable opportunity to obtain an Eagle Act permit, contingent on their remaining in full compliance with the terms and conditions of their take statements. For these purposes, "reasonable opportunity" means 1 year after the effective date of this rule, i.e., 13 months from the date of publication of this rule in the **Federal Register**. By that date, such applicants need to submit a completed application under these regulations. For ESA section 7 take statements issued before the date this rule takes effect, only those permittees whose activities will continue to take eagles *after* this 1-year period need to apply for an Eagle Act permit under these new regulations (as long as any take that occurs between August 8, 2007 (the effective date of the delisting of most bald eagles in the coterminous United States), through the end of this 1-year period is in accordance with the terms and conditions of the previously granted ESA incidental take statement).

For ESA section 7 incidental take statements issued on or after the date this rule takes effect, there will be no conversion period. At the present time, this applies only to the population of eagles found in the Sonoran Desert region of Arizona. Our aforementioned assurances that we will not refer take under the Eagle Act do not apply to take statements issued on or after the date this rule takes effect. If take of eagles is

proposed within an ESA-listed population that we could authorize in accordance with the statutory and regulatory requirements of both laws, the Service's Migratory Bird and Endangered Species programs will coordinate the authorization processes with the goal of issuing the Eagle Act and ESA authorizations in a synchronized manner.

A separate authorization under the Migratory Bird Treaty Act is not required. Many impacts authorized under the ESA that will require Eagle Act authorization will not "take" eagles under the MBTA because that statute does not contain a prohibition against harassment or disturbance (without injury) of the birds it protects. Therefore, activities that harass or disturb an eagle would not require MBTA authorization unless the activity also results in injury or some other impact prohibited by the MBTA. Even where MBTA take will occur, a separate MBTA authorization in addition to the Eagle Act authorization is not required because 50 CFR 22.11(a) exempts those who hold Eagle Act permits from the requirement to obtain an MBTA permit.

In extending Eagle Act authorizations to entities authorized to take bald eagles under ESA section 7, we will make the permit available to either the action agency or the agency's grantee or permittee, or both. Either or both the action agency or the third party can request an Eagle Act permit under this section.

In applying for the permit, the applicant must include a written certification that he or she is in full compliance with all terms and conditions of the ESA incidental take statement. In making our determination, we will also review other any other relevant information available to us, including, but not limited to, any monitoring and progress reports required and submitted in furtherance of the ESA incidental take statement.

We anticipate that most permits will be issued with terms and conditions identical to those of the ESA incidental take statement. However, based on comments received on the proposed rule, we added provisions to the final regulation to address re-evaluation of terms and conditions, either at the request of the applicant, or initiated by the Service. Persons previously covered under an ESA incidental take statement, who apply for take authority under the Eagle Act through these regulations, may request a reevaluation from the Service to determine whether the conservation measures required under the ESA authorization are still necessary to satisfy the Eagle Act standard of

compatibility with preservation of the bald eagle, or because of proposed modifications to the planned activity. However, if the ESA incidental take statement applies to eagles that are listed under the ESA, the Eagle Act permit cannot and will not remove or annul any terms and conditions contained in the ESA incidental take statement. Re-evaluation of the terms and conditions will likely require more time to process the application than when the applicant seeks to continue the past terms and conditions. Following issuance of the Eagle Act permit (as under most types of permits the Service administers) at any time during the permit tenure, the permittee may request amendment of his or her permit subject to general permit regulations at 50 CFR part 13.

We may initiate re-evaluation of terms and conditions under this rule if certain criteria that previously would have triggered reinitiation of formal consultation are present (see 50 CFR 402.16). Those criteria are any of the following: (1) The amount or extent of incidental take authorized under the take statement is exceeded; (2) new information reveals effects of the action that may affect eagles in a manner or to an extent not previously considered; or (3) the activity will be modified in a manner that causes effects to eagles not previously considered. If any of these factors is extant, depending on the specific circumstances, the Service may modify the terms and conditions as necessary to ensure that the authorized take is compatible with the preservation of the bald eagle or the golden eagle. The Service may re-evaluate the terms and conditions either before issuing the Eagle Act permit, or at any time during the permit tenure that one of the three "reinitiation criteria" triggers such re-evaluation, just as would be the case for the section 7 authorization. We do not anticipate that any such review under the Eagle Act would result in terms and conditions substantially different from those that would result under section 7 of the ESA.

The permit will be valid until the action that will take eagles, as described in the ITS 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.

There is no permit application form or processing fee for this permit. To apply for a permit under this section, the applicant must send to his or her Regional Migratory Bird Permit Office a signed statement requesting an Eagle Act permit under this section and

certifying that he or she is in full compliance with the terms and conditions of his or her ESA incidental take statement. If needed and applicable, the permit office may request the applicant submit copies of any monitoring and progress reports required under the take statement.

Revisions to General Permit Conditions at 50 CFR Part 13

As part of establishing the new permit authorizations under 50 CFR 22.28, we are amending the list of permits at 50 CFR 13.12 to add this new permit type. We are also amending 50 CFR 13.11(d), the nonstandard fee schedule, to include this new permit and provide that no processing fee will be charged.

Response to Public Comments

The comments addressed below include only those that pertain to the provisions being finalized in this rule. These include comments from two national environmental advocacy organizations, two industry associations, two law firms on behalf of real estate developers, one consultant, two committees representing multiple State natural resource agencies, and one Federal reclamation project. The remainder of the substantive comments we received in response to the June 5, 2007, proposed rule will be addressed in a subsequent rulemaking.

Comment 1: The criteria for permit issuance should be more stringent. Rather than give these “grandfathering” authorizations the barest of reviews, the Service must establish a system to assess these actions in light of the unique requirements of the Eagle Act. Language should be added to the sections on “Applying for a Permit” and “Required Determinations” to clarify that, before extending Eagle Act authorization, the Service will review whether the taking is necessary to protect an interest in a particular locality and whether the take is compatible with the preservation of the eagle. Before issuing these permits, the Service should also consider whether additional permit conditions or conservation measures are needed.

Service response: The take that will be authorized under the Eagle Act through these permits has been (or will be) reviewed at least twice by the Service. First, at the time the original ESA authorization was issued, the Service reviewed the take under either section 7 or section 10 of the ESA. Prior to issuing a section 7 incidental take statement, the Service assesses the effects of the action and issues the take statement only if we conclude the take would not jeopardize the continued

existence of bald eagles. For section 10 permits, the Service determines that the taking will not appreciably reduce the likelihood of survival or recovery of the species. For each of the ESA authorizations we issued, we included a statement that we did not intend to bring enforcement action under either the Eagle Act or the MBTA for the ESA-authorized take. Though the take was not technically authorized under the MBTA or the Eagle Act through the ESA authorization, we determined that the ESA conservation goal was compatible with the statutory mandate of both Acts. We carefully considered the consequences of extending Eagle Act authorization to these actions before proposing to do so in our June 5, 2007, proposed rule (see 72 FR 31141) and since then, as we examined public input on that rule. Our conclusion is that the taking authorized by the ESA authorizations is compatible with the preservation of the bald eagle, individually and cumulatively.

However, the authorizations granted under the ESA were themselves subject to re-evaluation by the Service under certain limited circumstances, and through this final rule, we are extending the same criteria that allowed us to revise terms and conditions under the ESA authorizations to the Eagle Act authorizations granted herein. For section 10 permits, we do this by adding language to the new provision at § 22.11 to clarify that the same regulatory provisions that applied to section 10(a)(1)(B) permits continue to apply, except that the revocation criterion is based on the Eagle Act mandate of compatibility with the preservation of the bald eagle or the golden eagle, rather than the ESA standard of inconsistency with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv). Accordingly, the Service cannot require any additional conservation measure for changed or unforeseen circumstances than we could have required under the ESA permit, but if mutually agreed upon conservation measures cannot assure compatibility with the preservation of the bald eagle or the golden eagle, the Service may revoke a permit that is determined to be incompatible with the preservation of the bald eagle or the golden eagle.

To provide for Service-initiated re-evaluation of the terms and conditions of section 7 authorizations, we have added language to the final regulations that mirrors the criteria for reinitiation of formal consultation under section 7, but is based on the Eagle Act standard of compatibility with the preservation of the bald eagle or the golden eagle.

Regarding whether the Service, before issuing each permit, must make the determination that take is necessary to protect an interest in a particular locality, we believe that extending Eagle Act authorization to take that was previously exempted under the ESA is necessary to protect the legitimate interests of those members of the public, in particular localities, who were proceeding in good faith under previously issued ESA authorizations and were complying with all required conservation measures of their take statements.

Comment 2: The regulations should contain an explicit finding that issuing Eagle Act permits for previously issued ESA authorizations is consistent with the Eagle Act’s take authorization provisions at 16 U.S.C. 668a.

Service response: We found above that the permits issued under this rulemaking are consistent with the Eagle Act. Additionally, based on this finding, the final regulations continue to use as the sole criterion for permit issuance whether the applicant is implementing the action as analyzed in the formal consultation and continues to fully comply with the terms and conditions of the previously issued ESA authorization.

Comment 3: The scope of “take” under the Eagle Act is far narrower than under the ESA. Therefore, the expedited permit processing criteria are appropriate.

Service response: Our conclusion that take previously authorized under the ESA is compatible with the preservation of the bald eagle is not based on a relative comparison of the two statutes’ definitions of “take.” Rather, it is based on the adequacy of the issuance criteria for ESA authorizations, including minimization, mitigation, and other conservation measures, designed to protect a species classified as threatened under the ESA, that would remain as terms and conditions under the Eagle Act authorization.

Comment 4: In the preamble to the proposed rule, the Service stated that persons applying under this permit would be given the opportunity to ask for a re-evaluation of permit conditions, to ensure that permittees are not compelled to undertake measures that would not otherwise be required to offset take under the Eagle Act. However, no such provisions were included within the proposed regulation itself.

Service response: We have added specific provisions for requesting a re-evaluation of permit conditions to the final rule in two places: In § 22.28(c),

Permit conditions; and in § 22.28(e)(2), Applying for an eagle take permit.

Comment 5: The Service should enact a general permit process similar to the U.S. Army Corps of Engineers' section 404(e) permit program under the Clean Water Act. The Eagle Act requirement that a permit must first be procured before bald eagle take can be authorized does not necessarily mean an individual permit is required. Without being automatically authorized via a general permit, some people may be subjected to criminal and civil penalties because they do not realize they need an Eagle Act permit.

Service response: The general permit program administered by the U.S. Army Corps of Engineers (Corps) provides authorization for certain types of activities without the landowner or developer having to obtain an individual site-specific permit in advance. The Clean Water Act specifically authorizes the Corps to issue general permits that are exempt from individual, case-by-case review (33 U.S.C. 1344(e)). No such provision exists within the Eagle Act, which states that "bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior" (16 U.S.C. 668a). Because of that provision, we can promulgate regulations that authorize take of golden eagles without a permit, but not bald eagles; a regulation is not sufficient authorization, absent a permit from the Department of the Interior to take bald eagles.

The U.S. Court of Appeals for the District of Columbia Circuit has held that the Corps' nationwide general permits meet the statutory definition of rules because they are "legal prescription[s] of general and prospective applicability" *Natl. Assn. of Home Builders vs. U.S. Army Corps of Engineers*, 417 F. 3d 1272, 1284, D.C. Cir. 2005. Thus, if we attempted to authorize take of bald eagles with a "prescription of general and prospective applicability" and without individual permits, a reviewing court might find this to be inconsistent with the Eagle Act's requirement that a permit be procured prior to taking bald eagles. Consequently this final rule continues to require an application process, review, and issuance of a permit before take of bald eagles may be authorized under the Eagle Act for ESA section 7 authorizations because they were not provided via a permit from the Secretary of the Interior.

Regarding the issue of liability for unauthorized take, we believe that persons who were previously

authorized to take eagles under the ESA should be at least as aware that most bald eagles were delisted and of the need to gain take authorization under the Eagle Act as the average citizen who has never had occasion to consider his legal responsibilities with regard to eagles.

Comment 6: There need to be timelines for issuance of the expedited permits, i.e., if no action is taken by the Service within 45 days, the applicant can conclusively presume that the permit is granted.

Service response: Regardless of any presumption on the part of the applicant, the activity is not authorized under the Eagle Act without a permit. We intend to issue these permits expeditiously, and we may include permit processing targets for these types of permits in forthcoming implementation guidance. However, due to factors not always under our control, such as the volume of requests, incomplete information provided by applicants, etc., we cannot always meet desired targets.

Comment 7: There should be a finite period of time during which people with previously issued incidental take statements must seek their conversion to an Eagle Act permit.

Service response: Elsewhere in the preamble, we have clarified that we expect those persons who wish to be able to continue to rely on the assurances provided in past ESA section 7 incidental take statements to apply for permits under this section within 1 year after this rule takes effect (thirteen months from the date of publication in the **Federal Register**). For ESA section 7 take statements issued on or after the date this rule takes effect, there will be no conversion period: The recipient of the take statement needs immediately, or concurrent with the related ESA consultation, to seek a permit under this section (until such time as a permit is available under § 22.26). An Eagle Act permit is required to authorize take under the Eagle Act regardless of whether the take has been exempted under section 7, and our aforementioned assurances that we will not refer take under the Eagle Act will not be included in incidental take statements issued on or after the date this rule is finalized.

Comment 8: The Service needs to issue an Enforcement Directive from the Director to the field providing assurances during the interim period that it will not exercise any enforcement. The directive should be similar to the February 9, 1996, memorandum from the Director to the Regional Directors, which suggested that

the Regions include statements in ESA incidental take authorizations they issue to the effect that the Service would not initiate enforcement actions under the Eagle Act and MBTA for the ESA-authorized take of migratory birds and eagles.

Service response: This comment loses some of its urgency with the release of these final regulations. Even so, an "enforcement directive" that would apply for the next year while applicants undergo the Eagle Act permitting process may still be desired. However, we do not agree that an internal memorandum wherein the Director transmits "recommendations to the Regions as interim guidance," as was the case with the February 9, 1996, memorandum, would provide greater assurances than we have already provided through language contained in four separate rulemaking actions (including this one) published in the **Federal Register**.

Comment 9: Recipients of technical assistance letters that authorized activities under the ESA that are inconsistent with the National Bald Eagle Management Guidelines (see 72 FR 31156, June 5, 2007) may be subject to Eagle Act prosecution. Eagle Act permits should be expedited for recipients of such technical assistance letters.

Service response: Technical assistance letters could not and did not provide any authorization to take eagles. The only means available to gain authorization to take eagles under the ESA was by means of a permit issued under section 10 or an incidental take statement issued under section 7. The role of technical assistance letters was to inform the landowner or project proponent that the Service did not consider take likely to occur. Generally we issued these letters after providing technical assistance to the project proponent that included recommended modifications to the planned activity to minimize the possibility of take, and after the project proponent agreed to incorporate the measures. Technical assistance letters do not authorize take should it occur despite the recommended measures; only a permit or incidental take statement could absolve a person of liability for take of eagles. In situations where these letters were issued and the activity proceeds, there is no Eagle Act violation unless an eagle is disturbed or otherwise taken, regardless of whether the activity was consistent or not with the National Bald Eagle Management Guidelines.

If take does occur, the Service is unlikely to prioritize enforcement actions against a party that followed the

Service's written advice (in the form of the technical assistance letter) regarding what steps were necessary to avoid taking eagles. Furthermore, although take of bald eagles under the Eagle Act can be authorized only by permit, it is not our goal to encourage applications for permits to cover take of eagles that is in fact very unlikely to occur. We believe our conservation mission is best served by helping the public reduce the likelihood of take, and to provide permits in appropriate circumstances where take is likely (and cannot practicably be avoided).

Comment 10: The Service should issue immediate guidance regarding prospective applicants who were in the midst of the HCP process when the bald eagle was delisted. The guidance should provide methods and standards for applicants to follow pending adoption of final take permit rules. Applicants who conform to the process should be given written assurances that the Service will not prosecute for eagle take, and the final rule should provide a means to convert that assurance into a permit.

Service response: This final rule provides a resolution of the issue raised by the commenter for most situations where project proponents were in the midst of developing an HCP that covered eagles when the bald eagle was delisted. The rule provides Eagle Act authorization for eagle take authorized under the ESA, including under future ESA section 10 permits.

However, there are some parties whose uncompleted HCPs were going to cover bald eagles but no other ESA-listed species, and they are no longer able to obtain a section 10 permit under the ESA for delisted eagles and cannot apply for take authorization under the Eagle Act until we finalize our proposed Eagle act take permit regulations. We recognize the difficult position in which these parties find themselves, having expended some effort towards development of HCPs and permit conditions for purposes of obtaining take authorization for bald eagles under the ESA. The best solution is that we expeditiously complete the new permit rule discussed above.

The difficulty with issuing the type of guidance the commenter suggests is that the handful of applicants in this position had reached different stages of the process at the time of bald eagle delisting. A few had nearly finalized development of appropriate minimization, mitigation, and conservation measures, but others had not. Because specific measures are needed in each particular situation to ensure impacts to eagles will be

adequately mitigated, general guidance—other than what we provide in the National Bald Eagle Management Guidelines (e.g., how to avoid take)—would not be appropriate. For the handful of applicants who were engaged in the HCP process *and cannot avoid taking eagles*, we recommend that each such party continue working with our Ecological Services Field Office to implement measures that will minimize take until a means of Eagle Act authorization becomes available. The Service focuses its enforcement resources on investigating and prosecuting individuals and companies that take migratory birds without regard for the consequences of their actions and the law, especially when available conservation measures have not been implemented.

Comment 11: The statement that certain section 10 permits are “null and void” upon delisting should be struck because the minimization and mitigation measures are still required. Also, some of these permits contain the provision that the bald eagle will be covered if re-listed in the future.

Service response: We addressed this issue in the preamble discussion above: We do not consider certain section 10 permits to be “null and void” because eagles were the only listed species they covered. Rather, those permits are “ineffective for purposes of providing ESA authorization.” The commenter is technically incorrect in saying that HCPs that covered bald eagles as the only ESA-listed species contain the provision that the bald eagle will be covered if (delisted and) re-listed in the future. Neither the HCP, nor the permit, nor any implementing agreement included that specific provision. However, even without such a provision, the result is the same: If the bald eagle is re-listed for any reason in the future, we would recognize those permits as valid (within the timeframe for which the original permit was valid). Therefore, the single-species section 10 permit is not null and void, and can be treated under this rulemaking in the same manner as a section 10 permit associated with a multi-species HCP. The validity of the permit for both Eagle Act authorization and for future authorization under the ESA continues to be predicated on the permittee's compliance with the terms and conditions of the ESA permit.

Furthermore, the commenter is correct in noting that, even while the bald eagle remains off the List of Endangered and Threatened Wildlife and the single-species permit is “inactive” or “quiescent” for ESA purposes, if post-delisting take of bald

eagles occurs, the permittee remains responsible for required minimization or mitigation measures that pertain to bald eagles in order to avoid liability under the Eagle Act.

Required Determinations

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211, which addresses regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a

threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule may benefit a variety of small businesses, including real estate developers and brokers; construction companies; forestry and logging, farming, and ranching operations; tourism companies; utility companies; and others who were previously granted authorization to incidentally take eagles under the ESA. However, the benefits are more legal in nature than economic because this rule provides legal coverage under the Eagle Act for activities that are underway and proceeding under assurances provided by the Service that it would use enforcement discretion with regard to the Eagle Act as long as the activities are conducted under the terms and conditions of ESA authorizations. The Eagle Act authorizations will apply to the same activities for which these assurances had been provided a connection with an ESA authorization. Thus, additional economic benefits will not be significant.

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. The principal economic effect of the rule would be to remove uncertainty and facilitate transactions related to activities that may incidentally take bald eagles, where the take had been authorized until the bald eagle was delisted under the ESA. Small entities that benefited from the issuance of permits under the ESA will continue to benefit from permits issued under this rule.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The permits issued under this regulation will not significantly affect costs or prices in any sector of the economy. The rule

provides regulatory assurances under the Eagle Act for take that had previously been authorized under the ESA.

c. Will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This regulation establishes a mechanism to permit effects from activities within the United States that were already authorized under a different statute. Therefore, there is no anticipated negative economic effect to small businesses resulting from this rule.

Unfunded Mandates Reform Act

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

a. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. A Small Government Agency Plan is not required. The permit regulations that are established through this rulemaking will not require actions on the part of small governments.

b. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will affect some private property insofar as it provides some land owners Eagle Act authorization for activities on their property that might incidentally take bald eagles, where the take was or is authorized under the ESA. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not interfere with the States' ability to manage themselves or their funds. Changes in the regulations governing the take of eagles should not result in significant economic impacts because this rule allows for the continuation of a current activity (take of eagles) albeit under a different statute (shifting from the ESA to the Eagle Act). A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule will not interfere with Tribes' ability to manage themselves or their funds. This rule will not affect the process by which members of federally recognized tribes apply for and receive permits to possess eagle parts from the National Eagle Repository or permits to take eagles from the wild for religious purposes.

Paperwork Reduction Act

This rule does not contain new information collection under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Any information we collect will be in the form of a certification and is therefore exempt from Paperwork Reduction Act requirements. We may not collect, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number.

National Environmental Policy Act

We have considered this action and determined that we do not need to prepare an environmental assessment (EA) or environmental impact statement (EIS) in association with the National Environmental Policy Act of 1969 because this action is categorically excluded from such analysis under the Department of the Interior's NEPA procedures at 516 DM 8.5(A)(1), which covers changes or amendments to an approved action when such changes have no or minor potential environmental impact. The authorizations provided under these regulations are "approved actions" and are being extended with no changes in most cases. If any permits are issued under these regulations with changed permit conditions (at the request of the holder of an ESA authorization) and the changed conditions have the potential for a more than minor impact, the permits will be subject to the NEPA assessment on a case-by-case basis before they are issued. Therefore, relative to those permits, this action is

categorically excluded under 516 DM 2, Appendix 1.1.

Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires all Federal agencies to “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.” This rule provides authorizations for impacts that were already assessed under section 7 of the ESA and maintains the requirement to comply with the conservation measures prescribed under those assessments for

listed species. This rule has no impact on endangered or threatened species.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Birds, Exports, Imports, Migratory birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

■ For the reasons described in the preamble, we amend subchapter B of

chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Amend § 13.11(d)(4) by adding an entry in the table as the last entry under “Bald and Golden Eagle Protection Act”, to read as follows:

§ 13.11 Application procedures.

* * * * *
(d) * * *
(4) *User fees.* * * *

| Type of permit | CFR citation | Fee | Amendment fee |
|---------------------------------------------|--------------|-----|---------------|
| * * * * * | | | |
| Bald and Golden Eagle Protection Act | | | |
| Eagle Take—Exempted under ESA | 50 CFR 22. | | |
| * * * * * | | | |

* * * * *

■ 3. Amend § 13.12(b) by adding to the table the following entry in numerical order by section number under “Eagle permits” to read as follows:

§ 13.12 General information requirements on applications for permits.

* * * * *
(b) * * *

| Type of permit | Section |
|-------------------------------------|---------|
| * * * * * | * |
| Eagle permits: | |
| * * * * * | * |
| Eagle Take—Exempted under ESA | 22.28 |
| * * * * * | * |
| * * * * * | * |

PART 22—[AMENDED]

■ 4. The authority citation for part 22 is revised to read as follows:

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

■ 5. Amend § 22.1 by revising the first sentence to read as follows:

§ 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.
* * *

■ 6. Amend § 22.11 as follows:

- a. By revising the first sentence of the introductory text to read as set forth below;
- b. By redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d); and
- c. By adding a new paragraph (a) to read as set forth below.

§ 22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, 50 CFR part 13, 50 CFR part 17, and/or 50 CFR part 21 as provided by § 21.2, or authorized under a depredation order

issued under subpart D of this part.
* * *

(a) A permit that covers take of bald eagles or golden eagles under 50 CFR part 17 for purposes of providing prospective or current ESA authorization constitutes a valid permit issued under this part for any take authorized under the permit issued under part 17 as long as the permittee is in full compliance with the terms and conditions of the permit issued under part 17. The provisions of part 17 that originally applied will apply for purposes of the Eagle Act authorization, except that the criterion for revocation of the permit is that the activity is incompatible with the preservation of the bald eagle or the golden eagle rather than inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv).

* * * * *

■ 7. Amend part 22, subpart C, by adding new § 22.26, § 22.27 and § 22.28 to read as follows:

Subpart C—Eagle Permits

* * * * *

§ 22.26 [Reserved]**§ 22.27 [Reserved]****§ 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).

(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 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 modifications 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.

Dated: April 22, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

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