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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–R9–MB–2011–0054; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AX91

Eagle Permits; Changes in the Regulations Governing Eagle Permitting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We revise the regulations for permits for take of golden eagles *(Aquila chrysaetos)* and bald eagles *(Haliaeetus leucocephalus)* that is associated with, but not the purpose of, an activity. We extend the maximum term for programmatic permits to 30 years, while maintaining discretion to issue permits of shorter duration as appropriate. The permits must incorporate conditions specifying additional measures that may be necessary to ensure the preservation of eagles, should monitoring data indicate the need for the measures. This change will facilitate the responsible development of renewable energy and other projects designed to operate for decades, while continuing to protect eagles consistent with our statutory mandates. For a permit valid for 5 years or more, we will assess an application processing fee sufficient to offset the estimated costs associated with working with the applicants to develop site plans and conservation measures, and prepare applications, and for us to review applications. We also will collect an administration fee when we issue a permit and at 5-year intervals.

DATES: This rule goes into effect on [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Chief, Division of Migratory Bird Management, at 703-358-1714.

SUPPLEMENTARY INFORMATION:

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act or BGEPA) prohibits take of bald eagles and golden eagles by otherwise lawful activities, except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR), define the "take" of an eagle to include the following broad range of actions: "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb" (§ 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the "taking, possession, and transportation of [bald eagles 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).

On September 11, 2009, we, the U.S. Fish and Wildlife Service (FWS or Service), published a final rule that established new permit regulations under the Eagle Act for

incidental take of eagles (74 FR 46836) while conducting otherwise lawful activities. The regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles when the taking is associated with, but not the purpose of, an otherwise lawful activity. The regulations provide for both standard permits, which authorize individual instances of take that cannot practicably be avoided, and programmatic permits, which authorize recurring take that is unavoidable even after implementation of Advanced Conservation Practices (ACPs). We have issued standard permits for commercial and residential construction, transportation projects, maintenance of utility lines and dams, and in a variety of other circumstances where take is expected to occur in a limited timeframe and specific location. For instance, take that does not reoccur, such as temporary abandonment of a nest, or is caused solely by indirect effects, does not require a programmatic permit, but may require a standard permit.

"Programmatic take" of eagles is defined at 50 CFR 22.3 as "take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified." For additional explanation of programmatic take and programmatic permits, see 74 FR 46841–46843.

We may issue programmatic permits for disturbance and for take resulting in mortalities, based on implementation of ACPs developed in coordination with us. ACPs are "scientifically supportable measures approved by the Service that represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable" (50 CFR 22.3). Most take authorized under § 22.26 has been in the form of disturbance. However, permits may authorize lethal take that is

incidental to an otherwise lawful activity, such as mortalities caused by collisions with wind turbines, powerline electrocutions, and other potential sources of incidental take.

On the same day that the proposed rule for this rulemaking was published in the **Federal Register** (77 FR 22267, April 13, 2012), we also published an advance notice of proposed rulemaking (ANPR) looking at all aspects of the 2009 permit regulations (see 77 FR 22278). The ANPR sought public input on how the regulations could be revised to be more efficient or otherwise improved. The notice highlighted three issues about which we were particularly interested in hearing from the public: (1) the standard for programmatic permits that take must be reduced to the point where it is unavoidable; (2) mitigation requirements and options; and (3) our interpretation of the Eagle Act "Preservation Standard." We have reviewed the public comments on the ANPR. We intend to propose additional revisions to the permit regulations based on the comments received on the ANPR and other factors. Several comments have suggested that this tenure rule should be labeled as an interim rule, or state in the rule text that the rule is effective until it is amended or replaced. In promulgating this final rule, we note that this rule is effective until amended or replaced and that, as such, labeling this rule with interim rule text is unnecessary. Moreover, it is our intention to move ahead in the near future with the additional rulemaking that we initiated through the ANPR. That rulemaking will provide an opportunity to revisit all aspects of the 2009 regulations, as well as the provisions of this tenure rule.

Since we published the proposed rule, we have finalized the Eagle Conservation Plan Guidance (ECPG) Module I for Land-based Wind Energy. The ECPG describes the processes that the Service recommends wind energy permit applicants use to conduct

eagle surveys, evaluate risk of activities to eagles, avoid and minimize risks to eagles, compensate for unavoidable take, and apply an adaptive management framework. For a more comprehensive discussion of any of these activities related to the permitting of wind energy facilities, please see the ECPG, which is available at: *http://www.fws.gov/migratorybirds/PDFs/Eagle%20Conservation%20Plan%20Guidance-Module%201.pdf*.

A recent assessment of the status of the golden eagle in the coterminous western United States showed that, over the past 40 years, populations have been trending slightly downward in some areas and upwards in others, such that on balance the population appears stable in response to existing demographic factors (Millsap et al. 2013).

Permit Duration

In February 2011, we published draft Eagle Conservation Plan Guidance that provided information on how to prepare Eagle Conservation Plans and apply for eagle take permits. Many commenters recommended that we extend the maximum term of the permit, as we are doing with this rule. Since publication of the 2009 final rule, we have reviewed applications from proponents of renewable energy projects, such as wind and solar power facilities, for programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. During our review, it became evident that the 5-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) should be extended to better correspond to the operational timeframe of renewable energy projects. On April 13, 2012, we proposed to amend the regulations to provide for terms of up to 30 years for programmatic permits (77 FR 22267). In today's rulemaking, we are finalizing that proposal with minor modifications as described below. We now: 1) clarify what will happen during the 5-year reviews; 2)

specify that we will make annual reports and 5-year compilations available to the public; and 3) clarify the definition of "low risk" to eagles. We will revisit the provisions of this rule during our review of the 2009 eagle rule.

In light of the longer permit durations that we are adopting in this rulemaking, we intend, if appropriate, to incorporate into the terms and conditions of the permit a commitment from the applicant to implement additional, specific mitigation measures. The additional measures would be triggered if the authorized level of take is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles. These additional, specific mitigation measures will be described in detail in the permit, which will describe the consequences to, and requirements of, the applicant if take greater than was predicted occurs or new information about eagle populations affected by the activity becomes available, for example, unexpected declines in affected eagle populations. However, if the additional mitigation measures prove inadequate to meet the Eagle Act's preservation standard, the regulations at § 22.26(c)(7) allow us to further amend any programmatic permits to safeguard eagle populations – consistent with the limits jointly agreed to at the outset of each permit. Permit revocation is a final option if an activity is not compatible with eagle preservation. We anticipate that implementing additional mitigation measures identified as permit conditions will reduce the likelihood of amendments to, or revocation of, the permit.

If the Service and applicant determine that the proposed activity may be suitable for testing experimental ACPs, we will identify such measures and protocols for testing

their effectiveness. The Service anticipates limiting costs associated with studying experimental ACPs associated with any permit.

All quantifiably predicted or verified take (based on past monitoring) that exceeds take thresholds for the eagle management unit for the species identified in the 2009 Environmental Assessment (U.S. Fish and Wildlife Service; Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act; April 2009) must be offset with compensatory mitigation that results in no net loss to the population. For activities without ACPs, we will identify potential risks that are not addressed by avoidance and minimization measures and experimental ACPs that might address those risks. We and the permittee will agree on the upper limit on the costs to implement and on trigger points tied to post construction monitoring that, if reached, would result in implementation of the experimental ACPs. If the project causes fatalities that meet or exceed the amount authorized by the permit, and if experimental ACPs or additional conservation measures cannot be implemented to reduce those fatalities, we may have to rescind the permit for that project to comply with the "stable or increasing breeding population" standard for protection of the species, as specified in the 2009 final rule.

Adaptive Management Process

Management of some types of facilities, such as wind energy facilities, to minimize eagle take, entails a set of recurrent decisions made in the face of uncertainty. The Department of the Interior (DOI) has a long history of approaching such decisions through a process of adaptive management (Williams et al. 2007). The purpose of adaptive management is to improve long-term management outcomes, by recognizing

where key uncertainties impede decision-making, seeking to reduce those uncertainties over time, and applying that learning to subsequent decisions (Walters 1986).

In the case of managing eagle populations in the face of energy development, there is considerable uncertainty. For example, evidence shows that in some areas or specific situations, large soaring birds, specifically raptors, are especially vulnerable to colliding with wind turbines (Barrios and Rodriguez 2004, Kuvlesky et al. 2007). However, we are uncertain about the relative importance of different factors that influence that risk. We are also uncertain which strategies would best mitigate the effects of wind energy developments on raptors. Populations of raptors with relatively low fecundity, such as golden eagles, are more susceptible to population declines due to new sources of mortality. We face challenges managing eagle populations because we need better information about: 1) factors that affect collision risk; (2) factors affecting population trends; and (3) efficacy of various avoidance and mitigation measures. Our goals are to maintain eagle populations while authorizing limited incidental take, use adaptive management to address uncertainty, and improve our predictive capability over time. Applying a systematic, nationally consistent strategy of management and monitoring is necessary to accomplish these goals.

Advanced Conservation Practices and Adaptive Management

We believe that the best course of action is to work with industry to develop ACPs for wind projects and other activities as an element of adaptive management associated with the programmatic take permit process. This process will be applied to other types of projects and activities where the impacts of the activity are uncertain and measures to reduce potential take have not been well-tested. A project developer or

operator will be required to implement all available measures to avoid and minimize incidental take of eagles at a project. For wind projects, the Service and the project developer or operator will work together to minimize the impacts of site-specific, and possibly turbine-specific, factors that may kill or disturb eagles, and develop ACPs to reduce or eliminate risks that are substantiated by the best available science. Unless we determine that there is a reasonable scientific basis to implement experimental ACPs, such potentially costly measures will be deferred until such time as a predefined trigger, such as a threshold of eagle use of a defined area or an eagle fatality, in the permit is reached. At that point, consistent with the adaptive management process, the permittee will be required to implement the additional ACP as a condition of the programmatic eagle take permit. In this way, a project developer or operator will not be required to expend funds to address a problem that may not exist.

The Service has not currently identified ACPs for wind energy projects that reduce eagle disturbance and blade-strike mortality. The development of ACPs for wind energy facilities has been hampered by the lack of standardized scientific studies of potential ACPs. We have concluded that the best way to obtain the needed scientific information is to work with industry to develop ACPs for wind projects, and perhaps for other industries, as part of an adaptive management regime and comprehensive research program tied to the programmatic-take-permit process.

ACPs will be implemented at operating wind facilities with eagle take permits on an "experimental" basis. The ACPs are considered experimental because they have not yet been scientifically demonstrated to be effective. The experimental ACPs would be scientifically evaluated for their effectiveness, as described in detail in the Service's

Eagle Conservation Plan Guidance, and based on the results of these studies, could be modified in an adaptive management regime. This approach will provide the needed scientific information for the future establishment of formal ACPs, while enabling wind energy facilities to move forward in the interim.

If a permit trigger is reached, developers or operators would be required to implement the potentially effective experimental ACP(s) and to monitor future eagle take relative to the ACP(s). As the results from monitoring experimental ACPs across a number of facilities accumulate and are analyzed as part of the adaptive management process, scientific information in support of certain ACPs may accrue, whereas other ACPs may show little value in reducing take. If we determine that the available science demonstrates an experimental ACP is effective in reducing eagle take, we will approve that ACP and require its implementation when and where warranted and feasible. If this approach is successful in the context of wind projects, the Service will consider employing a similar process in developing permitting provisions for other industries as necessary.

Programmatic Permit Evaluation process

For projects with programmatic eagle take permits, intensive monitoring to estimate the actual annual fatality rate and to assess disturbance effects may be required in accordance with monitoring provisions at 50 CFR 22.26(c)(2) and (3). Permittees will be expected to submit annual reports on eagle monitoring and any eagles found injured or dead at their facility. The Service will make mortality information from these annual reports available to the public. At no more than 5-year intervals from the date a permit is issued, the permittee will compile a report documenting fatality and other pertinent

information for the project and submit the report to the Service. The Service will review the information with the permittee to determine if a trigger point has been reached that requires implementation of one or more experimental ACPs or additional mitigation measures designed to reduce eagle mortalities. Additional post-implementation monitoring will be required to determine the effectiveness of the experimental ACPs. The Service will make mortality information from the 5-year compilation report available to the public.

We will evaluate each permit issued for more than 5 years at 5-year intervals. These evaluations will reassess fatality rates, effectiveness of measures to reduce take, the appropriate level of compensatory mitigation, and eagle population status. Depending on the findings of the review, we may make changes to a permit consistent with its terms and conditions, including any of the following:

(i) update the fatality predictions for the facility;

(ii) require implementation of additional conservation measures as described in the permit;

(iii) update monitoring requirements;

(iv) revise compensatory mitigation requirements in accordance with the permit;

(v) require revisions of the ACPs and additional mitigation measures; or

(vi) suspend or revoke the permit.

During the initial 5-year review, in consultation with the permittee, the Service will determine compensatory mitigation for future years for the project, taking into account the observed levels of mortality and any reduction in that mortality that is expected due to implementation of additional experimental and/or established ACPs.

Monitoring to determine the effectiveness of these ACPs and mitigation efforts will be a permit condition. We will modify the compensatory mitigation process to adapt to any improvements in our knowledge base as new data become available.

The specific objectives, duration, or extent of post-construction monitoring will be tailored to the specific conditions at each site. For example, the objectives of post-construction monitoring at a low-risk project will likely be to confirm that actual fatalities do not exceed some trigger level (likely much higher than the predicted fatality rate) rather than to confirm the predicted fatality, given practical limitations on the sampling that would be needed to confirm precise rates for such rare events. On the other hand, at sites where modest or relatively high numbers of fatalities are predicted, increased monitoring (both in rigor and duration) commensurate with the increased potential population effect will likely be required, and at sufficient intensity to provide a general indication of the actual fatality rate.

NEPA on Adaptive Management Elements

The adaptive management process relevant to each programmatic permit will need to be reviewed as part of the analysis required under the National Environmental Policy Act (NEPA) for each permit prior to permit issuance. If a permittee subsequently proposes to undertake additional measures beyond what was required in an issued permit and accompanying NEPA document, the Service will consider whether additional NEPA analysis is warranted.

Right of Succession and Transferability of Permits

We recognize that a succession of owners may purchase or resell the affected company or land during the term of the permit. Accordingly, we are revising regulations

at 50 CFR 13.24 (Right of succession by certain persons) and 13.25 (Transfer of permits and scope of permit authorization) to allow a programmatic permit to be transferable to the new owner of a project and to ensure that any successors to the permittee commit to carrying out the conditions of the permit.

Regulations at 50 CFR 13.24 and 13.25 impose restrictions on the right of succession and transferability of Service permits. These restrictions are appropriate for most wildlife permitting situations, but they are impractical and unduly restrictive for situations in which the permitted activity will be conducted over a lengthy period of years and ownership of the land or facility covered by a permit could reasonably be expected to change over that period.

The regulations at 50 CFR 13.24 allow for one or more successors to a permit: the surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or a receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors. For most Service permits, with the exception of certain long-term permits issued under Endangered Species Act (ESA) regulations, all the potential successor has needed to do to gain the privileges of the permit is to "furnish the permit for endorsement" to the permit office within 90 days from the date the successor begins to carry out the permitted activity. Through this rulemaking, a long-term Eagle Act permit will be subject to the same provisions that have applied to most Service permits. The permit transfer is subject to our determination that the successor meets all of the qualifications under this part for holding it; provides adequate written assurances of sufficient funding for any applicable conservation plan or agreement; demonstrates the willingness to implement the relevant terms and conditions of the permit, including any

outstanding minimization and mitigation requirements; and provides other information necessary for processing the request.

Section 13.25 addresses the circumstances in which someone other than the person to whom a permit is issued can carry out actions authorized by the permit. As a general matter, anyone who is under the "direct control" of the permittee or "under contract to the permittee for purposes authorized by the permit" can carry out such actions. For Eagle Act permits issued to certain governmental authorities, new paragraph (f) of § 13.25 clarifies that those who are under the jurisdiction of the permittee are considered to be under the permittee's direct control, in much the same manner as existing paragraph (e) treats ESA permits issued in association with habitat conservation plans, safe harbor agreements, and candidate conservation agreements with assurances. Similarly, paragraph (b) has been revised to allow Eagle Act and these three types of ESA permits to be transferred to one or more transferees based upon a satisfactory joint submission from the permittee and proposed transferee(s). Thus, this provision makes possible multi-participant or programmatic arrangements in which FWS can issue an ESA or Eagle Act permit to a single permittee who can then transfer the authority of that permit to one or more transferees with the approval of the FWS. Currently, paragraph (c) allows for the transfer of Safe Harbor and Candidate Conservation Agreements with Assurances, but only in the case of the transfer of lands subject to such agreements. The change made to 50 CFR 13.25(b) would allow transfer in additional circumstances by allowing the holder of an Eagle Act permit or a permit authorizing a programmatic Safe Harbor or Candidate Conservation Agreement with Assurances to transfer such permit to individual qualifying property owners, subject to FWS approval.

Permit Application Processing Fee and Administration Fee

This rule also amends the schedule of permit application processing fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for processing applications for programmatic permits for incidental take of bald or golden eagles. However, Federal, State, tribal, and other governmental agencies are exempt from the requirement to pay permit application processing fees for any permits issued by the Service (see 50 CFR 13.11(d)(3)(i)). This rule does not affect that exemption.

Experience to date has demonstrated that the current $1,000 permit application processing fee for programmatic permits is a very small percentage of the actual cost of reviewing and processing programmatic permit applications and providing technical assistance. With the anticipated costs of administering the permits, particularly those that authorize the taking of eagles over a decade or more, the current fee will be insufficient to cover Service expenses.

Executive Branch agencies have been directed to recover costs for providing special benefits to identifiable recipients *(http://www.whitehouse.gov/omb/circulars_a025)*. Recovered costs would include those for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. The increased application processing fee reflects the estimated cost to the Service of developing a management plan for monitoring the effectiveness of the terms and conditions of the permit.

Most of the costs to the Service will occur during the development and initiation of projects. The application processing fee combines both the costs of working with the applicant prior to submitting a permit application and processing the application. We

estimate the cost of processing an eagle take permit application to be approximately $36,000. Accordingly, we establish a $36,000 permit application processing fee for a programmatic permit. We may not approve all permit applications. As with other permits issued by the Service, we will not refund the application processing fee unless the application is withdrawn before we have significantly processed it (50 CFR 13.11(d)(i)).

To recover costs to the Service for monitoring and working with the permittees over the lives of the permits, we also will collect a permit administration fee of $2,600 upon each 5-year review of a permit. Therefore, the total administration fees range from $2,600 for a permit with tenure of 5 years to $15,600 for a 30-year permit.

We typically assess a fee for processing substantive amendments to permits during the tenure of a permit. For all programmatic permits, regardless of duration, the amendment processing fee will be $1,000, and the fee for processing the transfer of a programmatic permit will be $1,000.

For some ongoing activities, such as the operation of some types of infrastructure, there is a possibility that one or more eagles will be taken during the lifetimes of the activities, but take is unlikely. In such cases, we expect many project proponents will not feel compelled to apply for a permit. Alternatively, some developers may seek the security provided by a permit if an eagle is killed or injured. This rule establishes a separate fee category for "low-risk" projects. This category is based on the concept we introduced in the proposed rule as "small-impact." A number of commenters thought that term was confusing, so we are replacing it with "low-risk." The idea behind the "low-risk" category is to substantially reduce permit application processing fees for projects that we can identify, without committing substantial staff resources, as likely to have

minimal or no impacts to eagles even though take is possible over the lifetime of the project. Because applications for these projects will require significantly less work for us to evaluate, we are establishing a permit application processing fee of $8,000 for "low-risk" projects. The administration fee for these permits is $500 every 5 years.

Under "low risk" scenarios, the reduced costs to the Service result from a variety of factors, including the fact that the project proponent, rather than the Service, must document the low risk to eagles, and that there is no need to develop a robust adaptive management framework for a long-term permit. In contrast, if a reliable model indicates that the project will take even one eagle, the workload of the Service will substantially increase.

In our April 2012 proposed rulemaking for these regulations, we proposed a permit application processing fee of $5,000. The $8,000 fee we are codifying today is necessary to capture what we estimate to be the cost of providing technical assistance to low-risk project developers and reviewing and verifying the data they provide in the permit application to ensure that they meet the criteria for low-risk permits.

There are potential benefits to eagles from issuing permits in situations in which take is unlikely, because such "low-risk" permits will require monitoring and reporting (although less than is required for typical long-term programmatic permits), providing us with additional data on eagle use of the project areas and potential impacts of the permitted activities.

To qualify as "low-risk," the applicant must use models and predictive tools that we have approved to demonstrate that take is expected to be less than 0.03 eagles per year (or less than one eagle over 30 years). This rule establishes the following regulatory

definition of "low-risk," which will be codified at 50 CFR 13.11(d)(4): "Low-risk" means a project or activity is unlikely to take an eagle over a 30-year period and the applicant for a permit for the project or activity has provided the Service with sufficient data obtained through Service-approved models and/or predictive tools to verify that the take is likely to be less than 0.03 eagles per year.

Responses to Comments

Comment: Extending programmatic permit tenure to 30 years contradicts the Service's statement in the **Federal Register** notice for the 2009 regulations that it should not issue permits for periods longer than 5 years "because factors may change over a longer period of time such that a take authorized much earlier would later be incompatible with the preservation of the bald eagle or the golden eagle."

Response: The Service believes that the 5-year limitation on the duration of BGEPA permits is an unnecessary impediment for activities or projects that will last more than 5 years. By extending the duration of permits we expect to have more entities apply for permits and thereby work with our biologists to avoid and minimize and compensate for eagle impacts. Adaptive management elements that will be built into permits and our 5-year evaluations provide the Service with the ability to manage the permits to ensure adequate mitigation is provided by permittees to offset predicted detrimental impacts to eagles throughout the life of the permit. The Service retains the discretion to issue a permit for a term of less than 30 years, as appropriate.

Comment: The ability to predict and plan over a 30-year period is extremely limited because many factors that affect eagles and eagle populations will change considerably over 30 years. And the uncertainties regarding the population trajectories of

golden and bald eagles are too great to justify issuing 30-year programmatic permits. The Service does not have sufficient data about current populations of golden eagles, much less 30 years from now. Changes in adult survival can disproportionately influence population growth as compared to changes in birth rates. Population declines can occur very rapidly, particularly relative to the slow response time of government and particularly in light of climate change.

Response: The adaptive management elements that will be built into permits, along with our 5-year evaluations, provide the Service with the ability to manage the permits to ensure adequate mitigation is provided by permittees to offset detrimental impacts to eagles throughout the life of the permit.

Comment: Cumulative impacts from wind power on eagles are highly uncertain as there have been no large-scale studies on either a regional or national level. In addition to direct mortalities, cumulative impacts from loss of habitat may be significant and do not seem to be accounted for in the regulations or the Service's draft Eagle Conservation Plan Guidance. What would happen if the Service needed to decrease regional take thresholds and existing 30-year take permits put permittees over the threshold? If cumulative impacts prove to be unsustainable for eagles, how would the Service decide which permits to suspend or revoke?

Response: Under the terms of the 2009 permit regulation and associated EA, eagle take permits that exceed take thresholds for the affected regional eagle management units, either singly or in combination with other analyzed forms of take, must require that the eagle take be offset so that there is no net loss to the breeding population. Take thresholds may be adjusted up or down over time based on the changing status of eagle

populations. If a take threshold is lowered, resulting in a programmatic eagle take permit exceeding the new threshold, the Service will work with the permittee to implement additional measures to avoid and minimize take and implement compensatory mitigation pursuant to the adaptive management process. The permittee may be able to undertake additional conservation measures in the form of operational changes or compensatory mitigation. If there are multiple permits within the affected eagle management unit, each permittee would have to implement or contribute in proportion to additional mitigation.

Comment: Golden eagles could require ESA listing during the next 30 years. How does the Service plan to address the following three questions?

(1) If the golden eagle (or either species) were listed as a threatened or endangered species, and a wind energy developer then later sought to construct a facility on private land that might result in eagle take, which permits would the developer need to obtain to avoid liability for incidental take: an incidental take permit (ITP) under the ESA, a programmatic take permit under the Eagle Act, both permits, or a combined single permit?

(2) If a developer were issued an Eagle Act programmatic permit for a wind facility on private land, and the golden eagle (or either species) were then later listed as a threatened or endangered species during the life of the permit, would the existing programmatic take permit exempt the permittee from the take prohibition under the ESA or would the permittee need to apply for an ESA Section 10 ITP to avoid liability?

(3) If the permitted facility in (2) had a federal nexus at the time the Eagle Act programmatic permit was issued (e.g., the project required fill of wetlands and a 404 permit issued by the Federal Government), would an ESA Section 7 consultation be

required at the time of listing with respect to the eagle species covered by the programmatic permit?

Response: If golden or bald eagles are listed as threatened or endangered under the ESA, a project proponent or operator should evaluate the risk to the listed species, and, if appropriate, apply for an incidental take permit under the ESA. ESA incidental take permits also constitute Eagle Act permits as provided by 50 CFR 22.11(a). With regard to (2), if the project was already permitted under the Eagle Act, and the eagle was then listed under the ESA, the permittee would not need additional authorization under the ESA because § 22.11(b) provides that a permit is not needed under ESA regulations if the activity has been permitted under Eagle Act regulations. In response to (3), a section 7 consultation would be required at the time the eagle was listed under the ESA if there was an ongoing Federal action that affects the species. Many wind projects are currently obtaining ESA incidental take authorization for listed species under section 7 consultations. If the Service were to list golden or bald eagles under the ESA, project operators could seek similar coverage for listed eagles.

Comment: The 30-year permit tenure shifts the burden to the Service to show that additional mitigation measures are necessary. The criteria for renewal of a permit (which an applicant must demonstrate) are more stringent and thorough than criteria for amendment or suspension (which the Service must demonstrate). To renew a permit, the applicant must show that it has incorporated the latest scientific and technological information into its activities and that take continues to be unavoidable, whereas, under the proposed rule, no changes will be made to permitted activities unless the Service is able to demonstrate such changes are necessary to safeguard eagle populations. For 5-

year permits, the project proponent, who has the resources to gather the necessary information and a critical need to do so, is charged with regularly gathering and presenting that information in order to secure permit renewal. Under a 30-year permit, inertia, scarce resources, and the press of other work may mean that the permit stands unexamined or is cursorily reviewed.

Response: The Service has determined that, by incorporating adaptive management elements into permits and conducting 5-year reviews, the agency can effectively manage the permits in a manner that will offset detrimental impacts to eagles throughout the life of the permit. To offset the use of agency resources, the Service will collect a permit administration fee of $2,600 for each 5-year review.

Comment: The Service should consider creating a "provisional permit" that could be issued for the 30-year period, with concurrent full permits issued for 5-year periods therein. This could provide a somewhat streamlined process for full permit renewal at 5-year intervals, but would require thorough review of permit conditions with respect to current population levels, mortality rates, and cumulative impacts. The burden of proof would remain with the permittee to prove that the project meets the criteria for renewal.

Response: We considered this idea, but rejected it because it would require significant additional resources for the Service and it would not provide project developers the certainty provided by a permit for the anticipated project life. By implementing the comprehensive adaptive management program described in this final rule, the Service can work with project operators to manage their activities in ways that meet our eagle conservation mandates.

Comment: A 30-year permit would decrease opportunities for public stakeholder involvement because decisions on issuance and reissuance are subject to NEPA analysis and tribal consultation.

Response: Leaving the 5-year maximum permit term in place would have allowed for additional public and Tribal comment during the NEPA process for each of the multiple permit applications the Service would have evaluated for an activity expected to last decades. However, the NEPA analysis that we will undertake before issuing a longer-term permit will thoroughly analyze long-term effects of such permits with input from the public. One of the central objectives of this regulation is to provide more certainty to project developers for the operational life of a project. With the inclusion of the 5-year review provision, we believe this final regulation strikes a good balance between providing that certainty and ensuring that eagles continue to be protected as they are under shorter-term permits.

Comment: A 30-year permit is not necessary for long-term wind energy projects because the timeframe of investment and financing for wind energy projects is relatively short. The Service does not cite any documentation that the 5-year permit is incompatible with development of renewable energy.

Response: Wind developers have informed the DOI and the Service that 5-year permits have inhibited their ability to obtain financing, and we changed the regulations to accommodate that need while protecting eagles. Moreover, we may issue permits with shorter terms than the allowable 30-year maximum tenure, when appropriate.

Comment: Extended permit tenure should occur only if the total amount of authorized take remains the same as it would be under 5-year permits.

Response: Because long-term permits will be for projects that will be operational for more than 5 years, we assume this commenter meant that a 30-year permit should not authorize more take than would be authorized under a series of 5-year permits. The adaptive management elements that will be built into permits, along with our 5-year evaluations, will ensure that the total amount of authorized take will remain the same under the extended permit tenure as it would be under a series of 5-year permits and will remain compatible with the preservation of eagles.

Comment: If additional conservation measures in the 30 years a permit is valid would be required as frequently as permit changes would be required upon renewal of 5-year permits—that is, if the 30-year permits will be as effective in the requirement to protect eagles—then moving to 30-year permits provides industry with no greater certainty.

Response: The final regulations strike a balance between providing certainty to project proponents by extending permits to up to 30 years, and ensuring that the Service maintains the oversight and tools it would have at its disposal to protect eagles with a series of 5-year reviews of permits.

Comment: A 30-year permit tenure (along with permit transferability to new owners) will weaken the Service's ability to investigate and prosecute violations because each subsequent owner (and new permittee) will enjoy a grace period before any action is taken.

Response: We have long encouraged industries to employ "best practices" aimed at minimizing and avoiding the unpermitted take of protected eagles and other migratory birds. Each investigation presents unique factual and evidentiary factors. Therefore, this

regulation is consistent with the general Service policy of providing notice, encouraging compliance, and offering an opportunity to correct before pursuing charges against a permittee. Service agents refer for prosecution in instances of takes that occur after the responsible party becomes aware of the condition or practice causing the take and fails to remedy it. Unless a notice would compromise an investigation, the Service notifies the company or individual of the issue(s) relating to the take of eagles and provides the company or individual an opportunity to take remedial action to halt and/or minimize the take. Where possible, we work with the company or individual to facilitate communication of appropriate guidance to help eliminate any future take of eagles. We also document the relevant actions taken, or not taken, by the company or individual following notice.

Comment: A 30-year permit tenure will not be long enough for some wind facilities. The Service should state that the permit renewal should be—just like ESA section 10 permits—automatic.

Response: Permit renewal for ESA section 10 permits is not automatic. Renewal of a permit is an issuance of a new permit, and all issuance criteria must be met. We believe the 30-year permit tenure will provide sufficient long-term certainty for project proponents (who will have the option of renewing their permits as long as the projects continue to meet permit issuance criteria).

Comment: Many utilities have maintained long-term Avian Protection Plans ("APPs") that proactively address concerns relating to avian mortality. Implementation of APPs has been advantageous, allowing for a cooperative model to address concerns, rather than through a more rigid permitting scheme that adds cost to avian protection

activities. If necessary, the Service could issue Letters of Authorization for take at facilities with APPs. It is important to ensure that development and implementation of APPs remains a viable option to address the same concerns that a 30-year programmatic permit would address.

Response: An Avian Protection Plan (APP) is a voluntary good-faith effort to protect and conserve migratory birds, including eagles, by reducing the risk of and damage from avian interactions with power lines, wind turbines, or other infrastructure. APPs are developed by companies, sometimes in consultation with the Service or other government agencies. They are designed to target the risks that are present at the particular utility or infrastructure. APPs focus on preventing avian mortality by identifying areas of high bird use and establishing protocols for retrofitting equipment and/or modifying operations to protect avian species. The plans include monitoring and reporting protocols for documenting avian interactions for purposes of adaptive management and further reduction of hazards to birds.

Lower risk to birds generally correlates with greater reliability for the operations of the utility or other facility. By reducing avian mortalities, implementation of APPs also will reduce the facility's liability under the MBTA and the Eagle Act. For all those reasons, the Service strongly encourages development of APPs. However, an APP is not an authorization for any take that still occurs despite the APP. In most cases, facilities that are operating under well-designed APPs should find the eagle take permitting process more expedient. They also will generally need to implement fewer additional conservation measures as permit conditions.

Comment: There is language in the proposal that a permit is not necessary if there will be no impact; however, "if any take will occur, a permit is necessary." This language suggests that all forms of existing and future eagle take will require permits.

Response: Take of bald and golden eagles is illegal under the Migratory Bird Treaty Act and the Eagle Act. To remove liability for take under both statutes, a permit is needed. The language referenced by the commenter reads: "If there will be no impact, a permit is not necessary or appropriate. However, if any take will occur, a permit is necessary to avoid violating the Eagle Act and developers and operators of small-impact projects may wish to seek the coverage provided by a programmatic permit . . ."

Comment: Eagle take permits should be required before construction for all projects located in eagle habitat. Existing facilities should be required to apply for take permits, share existing data, and begin surveys using similar protocols as newly permitted facilities.

Response: The Eagle Act does not directly regulate otherwise legal activities that may result in the take of an eagle. Certain effects of otherwise lawful activities, such as construction and operation of wind facilities, can result in actions that are prohibited under the Eagle Act, such as disturbance, injury, or killing of eagles. Accordingly, eagle take permits do not authorize construction or operation of a facility, per se, and are not required to construct or operate such facilities. What the permit authorizes is eagle take that may result from the construction or operation. It is the responsibility—and choice—of the developer, operator, or landowner to seek a permit and avoid liability for such take. However the Service encourages all entities with a project that has a potential

to incidentally take eagles to obtain an eagle take permit prior to undertaking activities that could result in such takes.

Comment: The Service should make long-term permits available to existing facilities that began operations prior to 2009, even though opportunities for avoiding take are more limited. These facilities represent an opportunity to explore post-construction avoidance, minimization, and mitigation techniques.

Response: Eagle take permits are available to facilities that were operating prior to 2009. We anticipated that many such facilities would seek and obtain these permits. To date, the Service has received few eagle take permit applications from operating wind energy facilities.

We stated in the 2009 final rule implementing the regulation (74 FR 46836) that, because the requirements for obtaining programmatic take authorization are intended to reduce take, the take authorized by programmatic permits for activities ongoing prior to 2009 will neither be subtracted from regional thresholds, nor will it be subject to the prioritization criteria. The reductions in take that result from implementation of new measures to reduce take from ongoing activities under programmatic permits may allow the Service to increase take thresholds and make additional permits available for other activities likely to result in take.

Comment: Extension of permits for industry to 30 years prioritizes commercial activities over tribal cultural and religious needs because it will allow industry to take a larger, disproportionate number of eagles, while tribal members will be subject to the same limits imposed by the existing permit system. Issuing 30-year programmatic

permits could de facto change the priority order for who should receive eagle take permits established by the 2009 regulations.

Response: In the "eagle take rule" (50 CFR 22.26(4)), the Service identified a priority order for eagles available to be taken under permit as (in priority order): (1) Safety emergencies; (2) Native American religious use for rites and ceremonies that require eagles be taken from the wild; (3) renewal of programmatic take permits; (4) nonemergency activities necessary to ensure public health and safety; and (5) other interests. Under the eagle take rule, before we issue a permit we must find that issuance of the permit will not preclude issuance of another permit for an interest of higher priority. On a regional scale, issuance of 30-year permits should not change the availability of eagles for higher priorities, such as Native American religious use. Each long-term permit must meet the criterion that it is compatible with the goal of maintaining stable or increasing breeding populations of both species of eagles. Therefore, these long-term permits will not decrease eagle populations within eagle management units, and requests from higher priority applicants should not be affected.

Comment: Will 30-year permittees be required to comply with new laws or regulations that might be put into effect during the permit tenure?

Response: Unless laws or regulations contain provisions excluding certain persons or organizations, the provisions of such laws and regulations apply to all.

Comment: The regulations should restrict permits for long-term, industrial-scale projects to applicants who have conducted comprehensive pre-construction monitoring using rigorous methods endorsed by the Service.

Response: The regulations do not specify the precise methods applicants must use to conduct pre-construction monitoring. However, for purposes of wind energy development, the Service has developed the voluntary Wind Energy Guidelines and Eagle Conservation Plan Guidance, both of which provide detailed guidance on monitoring methods and data that would be useful to assess risk of project operations to eagles, other migratory birds, and wildlife. Much of this guidance would be applicable for other industries as well. Permit applicants do not have to follow this guidance, but their data should meet an equal level of rigor to allow us to assess impacts on eagles.

Mitigation and adaptive management

Comment: The Service is on record stating that it knows of no measures to reduce take at wind energy facilities (once sited and operational). The only proven method to reduce mortalities is to remove or decommission turbines. Therefore, what mitigation measures can the Service actually incorporate as conditions for adaptive management under these permits? Any measures to reduce take that are demonstrably effective should be required already as conditions of a programmatic take permit, and should not be classified as "additional."

Response: The preamble to the 2009 permit regulations envisioned the Service and industry working together to identify and evaluate possible ACPs. The process of ACP development for wind-energy facilities has been hampered because there has been little standardized scientific study of potential ACPs. Such information can best be obtained through experimental application of ACPs at operating facilities with eagle take permits. Considering the pressing need to develop ACPs for wind-energy facilities, the Service believes that the best course of action is to work with industry to develop ACPs

for wind projects as part of the programmatic take permit process. Under this scenario, a project developer or operator will still be expected to implement any reasonable avoidance and minimization measures that may reduce take of eagles at a project. However, the Service and the project developer or operator will discuss and agree on other site-specific, and possibly turbine-specific, factors that may pose risks to eagles and potential future ACPs that might reduce or eliminate those risks. Unless the Service determines that there is a reasonable scientific basis to implement prospective ACPs up front, potentially costly measures may be deferred until such time as there is eagle take at the facility and the circumstances and evidence surrounding instances of take or risk of take suggest the prospective ACPs are warranted. This agreement would be specified as a condition of the programmatic eagle take permit.

If eagle take is confirmed through post-construction monitoring, developers or operators would be expected to implement the potentially effective experimental ACP(s) and to monitor future eagle take relative to the ACP(s) as part of the adaptive management process. As the results from monitoring experimental ACPs across a number of facilities accumulate and are analyzed as part of the adaptive management process, scientific information in support of certain ACPs may accrue, whereas other ACPs may show little value in reducing take. If the Service determines that the available science demonstrates an experimental ACP is effective in reducing eagle take, the Service will approve that ACP and require its implementation when and where warranted.

Comment: The regulations need to be much clearer about when adaptive management measures will be required; the proposed rule states that the permittee will be required to undertake additional measures in the event that take exceeds predicted levels

or if new information indicates that such measures are necessary to protect eagles. Trigger mechanisms and mid-course changes must be unambiguously identified prior to permit issuance. Will additional measures be required of project proponents to address unforeseen circumstances? Will permittees be required to implement measures that were not considered at the outset and, therefore, were not specifically included as conditions of the permit?

Response: See our response to the previous comment. Also, the triggers that would initiate operational response will be described in each permit. The triggers will be project specific, and should address potential risks associated with the project. Triggers may include exceeding a set number of eagle fatalities, eagle use exceeding a set threshold, fatalities confirmed at a particular turbine or set of turbines identified as potentially risky, occupancy of a particular eagle nest site, or other measures.

Comment: Adaptive management must be "active adaptive management." Experimental variation in technology would need to be required at the outset. The trigger for implementing additional measures cannot depend on evidence of the effectiveness of the measures, since that evidence has not yet been collected. In order to comply with the regulations for programmatic permits, which require take to be unavoidable, the Service must be able to require implementation of new technologies that become available during the life of the permit.

Response: As a general matter, we do not agree that project developers should be required to undertake experimental measures when the efficacy of such measures has not been demonstrated. However, Section 22.26(h)(2) of this regulation provides that the Service may, as part of the 5-year review process, require that permittees implement

"additional conservation measures as described in the permit." Thus, the Service has the discretion to condition permits to require implementation of ACPs that become available during the life of the permit. In addition, if the Service determines that the available science demonstrates an experimental ACP is effective in reducing eagle take, the Service will approve that ACP and require its implementation upfront on new projects if warranted.

Comment: The rule does not provide sufficient predictability for wind developers because it does not contain "No Surprises" assurances. Any additional mitigation measures that may be required must be specifically identified up-front as permit conditions. Requiring the best-available techniques is too stringent, as these may be overly complex, costly, and untested. If measures cannot be specifically pre-defined, there needs to be a cost cap above which developers will not have to pay. The proposed rule would provide permit holders with no assurances that unanticipated, overly burdensome mitigation measures will not be placed on them or that the authorized level of take will be reduced whenever the Service deems that new scientific information calls for additional conservation measures. The lack of cost certainty throughout the life of the permit will significantly impact the wind energy industry. Without "No Surprises" assurances, potential investors will be very conservative in their assumptions, thereby inhibiting funding.

Response: Provision of "No Surprises" assurances is beyond the scope of this rulemaking. However the adaptive management process is intended to remove the possibility of any surprises by clarifying where and when additional measures would apply and what factors would trigger these measures. Under the Eagle Act, permits must

be compatible with eagle preservation. If eagle populations decline because of cumulative take or other environmental causes, we believe that a single permittee should not bear the cost of all additional conservation measures and/or reductions in authorized take that may be needed to stabilize the eagle population; additional actions and costs would be proportionately dispersed among permittees depending on the degree to which their activities impact eagles within the eagle management unit.

Comment: Language used in the proposed rule indicates that the U.S. Fish and Wildlife Service can alter the terms of the permit at its discretion or revoke the permit if the activity is not compatible with the preservation of the eagle. The language seems to indicate a decline in eagle populations could cause the Service to alter or revoke a permit even if the permittee was following all stipulations of the permit. How does this provide an incentive to a utility to obtain a take permit and invest in additional protection or mitigation programs?

Response: The comment refers to the Service's regulatory authority under the general permit regulations at 50 CFR Part 13. This authority applies to all wildlife permits issued by the Service. Through the Eagle Act, Congress provided the authority for the Service to issue take permits for eagles, but only when they are compatible with the preservation of the bald eagle and the golden eagle. We interpret this to mean that the permit must adequately protect eagles throughout the duration of the permit, and not just on the day the permit is issued. The general permit regulations provide one avenue for the Service to ensure adequate protection of eagles through the full term of each permit.

Comment: It is unlikely that additional mitigation measures could provide enough specificity to reduce uncertainty with respect to the proponent's cost while still incorporating meaningful adaptive management.

Response: We recognize the challenge in striking a balance between providing certainty to project proponents and protecting eagles. However, we do not agree that the provisions being promulgated in this rule create or increase the difficulty in reconciling the two objectives. Whether permits are issued for 5-year terms and then renewed (or not renewed), or the permits are issued for up to 30 years but reviewed every 5 years, the tension between providing proponents of longer-term projects certainty and protecting eagles would exist.

Comment: Additional mitigation measures should be required only if an eagle population is declining at the national, rather than at the local or regional level, since smaller populations are inherently more vulnerable than the entire species.

Response: On the basis of the analysis conducted in the final environmental assessment supporting promulgation of the 2009 eagle permit rule, we committed to managing eagles under all eagle permits at the scale of the regional eagle management units. Even at this scale, several State fish and wildlife agencies expressed concern about the possibility of harming eagle populations at finer scales. Accordingly, we will continue to assess the effects of our permits on eagle populations at regional and local-area population scales.

Comment: Adaptive management should be designed to respond to environmental and demographic changes at the population, subpopulation, and metapopulation scales.

Response: We agree and intend to use adaptive management to respond to changes at each of these scales, to the degree we can detect changes.

Comment: With Federal budgets in decline, it seems doubtful the Service will have the staff, tools, mechanisms, and resources needed to implement adaptive management.

Response: The Service and other Federal agencies face challenges in carrying out their missions in the face of shrinking budgets. However, the eagle conservation and permitting program is a Service priority. Accordingly, the Service based our revised fee schedule on our estimate of staff time necessary to process permit applications, review monitor reports, and engage in adaptive management discussions.

Comment: The current level of oversight the Service anticipates performing for long-term permits is grossly insufficient. The Service estimates that only 35 hours of agency time would be needed to visit facilities and evaluate impacts of permitted activities over 30 years.

Response: The estimate for post-issuance oversight for each 30-year permit, which we published in our proposed rule, is not 35 hours. That was the estimate for the average amount of time we expect to spend on site visits (not including potential law enforcement investigations). In addition to potential site visits, which we do not expect will be required for many permits, our estimate also includes an additional estimated 140 hours to monitor annual reports and an additional 76 hours to evaluate impacts for purposes of implementation of adaptive management measures.

Comment: Compensatory mitigation should be required only for actual, rather than predicted take, and thus should be assessed only as take occurs. There is evidence

that eagles may be able to learn to avoid turbine blades; thus by calculating the risk of eagle take through a formula that does not account for eagle avoidance of blades, and then requiring compensatory mitigation to completely offset that level of assumed take, the Service sets the compensatory mitigation level too high and requires compensation for "phantom" take that may never occur. There should be a process for refunding or crediting compensatory mitigation funds if the actual take is less than predicted.

Response: We will assess compensatory mitigation in 5-year increments, regardless of permit tenure. At the end of the first 5-year period, actual take will be compared with predicted take, and if actual take is different, adjustments may be made. One adjustment could be using the actual fatality rate to update the predicted fatality rate for future years.

We are not aware of published evidence that eagles learn to avoid turbine blades, but if such learning occurs it should be apparent in lower-than-predicted fatality rates over time. As such, this behavior would likely be accounted for in the adjustments between predicted and observed fatality rates for each permitted project.

Comment: It is unclear to what degree the status of an eagle population will be attributed to the take associated with a given project.

Response: The Service is working with the U.S. Geological Survey (USGS) to refine and improve population models for eagles that will better enable us to model and predict effects of authorized take on eagle populations. We do not anticipate being able to directly detect population-level responses to individual projects because it is not currently feasible to monitor eagle populations at such a fine scale. However, with monitoring and

assessment of cumulative impacts, we may be able to better predict the effects of authorized take.

Comment: If changes to the permit terms and conditions are expected by the Service during the pendency of the permit, the permittee should be provided as much advance notice as possible to plan and budget for potential changes in mitigation requirements. Periodic meetings (e.g., annually) between the permittee and the Service would be appropriate to ensure that both parties are informed on any potential issues or concerns.

Response: The Service will make a good faith effort to keep permittees informed of factors that may affect their permits.

Comment: All mitigation measures should be independently monitored to ensure they are successful.

Response: As far as onsite mitigation, intensive, targeted monitoring will be required when necessary to determine the effectiveness of conservation measures and ACPs implemented to reduce observed fatalities. For offsite mitigation, the Service does not have the resources to monitor all mitigation measures or the budget to hire a third party to do so. However, we will evaluate a large enough sample to ensure that such measures produce the expected outcomes.

Comment: The Service should consider developing some form of partnership or other mechanism to facilitate the pooled mitigation needs of project developers and to support the ongoing research that will be necessary to test mitigation techniques and verify their utility.

Response: We are open to considering partnerships and other mechanisms to identify efficiencies for mitigation at specific projects, explore opportunities to achieve large-scale eagle habitat conservation, and support additional research into mitigation techniques. Also, because permittees will be required to monitor and report the effectiveness of experimental mitigation techniques, the permit program itself is an opportunity to test such measures.

Rulemaking process

Comment: The decisions on issues set forth in the ANPR that was published concurrently with the proposed rule to extend permit tenure are prerequisites to any decision on permit duration and should be addressed concurrently.

Response: We agree that many of the issues addressed in the two rulemaking initiatives are closely related. However, we believe the issue of extending the permit duration is sufficiently independent from and more time sensitive than the issues highlighted in the ANPR to move forward with this final rule at this time. Further, the extension of the permit duration provides more certainty to developers of clean energy projects. We intend to revisit the issues addressed in the ANPR in a future proposed rule.

Comment: Making this rule change without tribal consultation, as is described by the **Federal Register** notice, contradicts the Department of the Interior's renewed commitment to consultation as set forth in new DOI guidance.

Response: This is a technical amendment to our regulations. It merely extends the approved duration of a permit from 5 to 30 years. The Service has recently invited tribes across the Nation to consult with us on several eagle conservation and management matters including possible additional, substantive revisions to the 2009 eagle rule. We

will also invite consultation with any tribes that may be directly affected by individual permit applications

Comment: Traditional Ecological Knowledge (TEK) about eagles should have been sought. Tribes have unique insights into ecosystem management and have worked in partnership with the Service in the past to ensure that TEK is incorporated into management plans, including for threatened and endangered species, forests, fisheries, range, and fire management. Incorporation of TEK has ensured that land management policies do not jeopardize species habitat and the continued existence, preservation, and recovery of endangered and threatened species.

Response: We will consult with tribes and seek TEK on individual projects as appropriate.

Comment: The Service should more closely involve the States in the planning process rather than listening only to the permitted public. Wildlife management in many States is heavily affected by the regulatory actions of the Service.

Response: We will coordinate with States in both the revision of the eagle rule and on individual project applications. States are also welcome to provide comments during the public comment period for any of our proposed rules.

NEPA

Comment: When an agency decides to apply a categorical exclusion and foregoes preparation of an environmental assessment (EA) or environmental impact statement (EIS), it is required under NEPA to adequately explain its decision, but the Service has not done so.

Response: We believe that the determination to apply a categorical exclusion to this administrative action was adequately explained in the proposed rule. The basis for applying the categorical exclusion is explained in further detail in the Required Determinations section of this final rule and in our responses to additional NEPA-related comments below.

Comment: The proposed rule changes are more than "administrative" in nature and so do not fall under the NEPA categorical exclusion invoked by the Service. Real, significant, and cumulative biological impacts will result if the proposed regulatory changes are implemented.

Response: We received several requests for clarification from commenters regarding our reliance upon the Department of the Interior categorical exclusion, 43 CFR 46.210(i), and have revised our explanation in light of these comments. Our revised explanation is presented here, as well as below in the Required Determinations section. First, the categorical exclusion upon which we are relying excludes from further NEPA analysis "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case." The provisions of this rule are administrative or financial in nature, and therefore, subject to the first part of this categorical exclusion. For instance, the implementation of a new fee schedule, the adjustments to the permit transfer and right of succession requirements, and the reduction of the administrative burdens and duplication of effort represented by the extension of permit duration to a possible 30-years, instead of the current 5-year limit, under which

proponents of longer-term projects must apply for, and the FWS review permits more frequently.

More importantly, however, the extension of the allowable permit duration from 5 to 30 years is subject to the second part of this categorical exclusion because it will be broadly implemented. Issuance of a permit of whatever duration for take of eagles requires compliance with NEPA. Extending the permit tenure from 5 years to 30 years will not cause environmental effects that lend themselves to meaningful analysis; instead, the effects of the permit tenure will be addressed on a case-by-case basis. A 50 CFR 22.26 eagle permit must contain permit conditions and be supported by an appropriate NEPA analysis that ensure the underlying project or action will continue to meet regulatory requirements, and that any take meets the Eagle Act's preservation standard throughout the entire duration of the permit, whether it is 5 years or 30 years. A permit with a duration of 30 years is, thus, likely to contain more conditions than a permit with a duration of 5 years to ensure continued compliance over the longer time span, including conditions that incorporate adaptive management principles, and be supported by appropriate NEPA analysis in the context of adaptive management as directed by 43 CFR 46.145 to account for reasonably anticipated changed circumstances. Additional conditions may include specific mitigation measures, possibly including additional compensatory mitigation requirements, that are triggered if actual take caused by the project exceeds anticipated take or to account for a reduction in local or regional eagle populations. Moreover, if such conditions prove inadequate at any time, the Service is authorized to amend permits as necessary under both paragraph (c)(7) of 50 CFR 22.26—establishing that the Service may amend and even revoke permits as necessary to

safeguard eagle populations—and paragraph (b) of general permit regulation 50 CFR 13.23, under which the Service may amend a permit for just cause at any time upon a written finding of necessity.

Finally, pursuant to 43 CFR 46.205(c), we have reviewed our reliance upon this categorical exclusion against the Department of the Interior's list of extraordinary circumstances (reproduced at 43 CFR 46.215), and find that none apply to this rule.

Comment: The Finding of No Significant Impact (FONSI) associated with the 2009 final rule committed the Service to measures to mitigate and/or minimize potential adverse effects of the 2009 permit regulations, enabling FWS to determine that the action was not a major Federal action that would significantly affect the quality of the human environment, and to avoid development of an EIS at that time. However, most of the commitments made in the mitigated FONSI have yet to be undertaken. The need for an EIS was also mitigated, according to the FONSI, by the Service's establishment of *conservative* limits on eagle permit issuance until additional data was available as well as to provide issuance of permits for take resulting in mortality for two reasons: (1) "to reduce the ongoing occurrences of unauthorized and unregulated mortality contributing to eagle losses" and (2) "to reduce long-term risk of take." Furthermore, the 2009 final EA did not envision or address numerous prospective permits authorizing activities causing ongoing and sustained eagle mortality—such as wind development—but rather were attempting to address historical take from unregulated entities. Extending the permit tenure to 30 years without undergoing a new, comprehensive NEPA analysis, much less carrying out the commitments made in the 2009 FONSI, is not in accordance with NEPA.

Response: As stated above, this rulemaking primarily alters the maximum permit duration from 5 years to 30 years, a change that is primarily administrative in nature and not anticipated to result in more than minimal environmental impacts. The conservative take thresholds applied to eagle permits will continue as nothing in this rulemaking affects either the conservation standards in the 2009 rule or the 2009 EA supporting it.

Environmental impacts of activities on local or regional eagle populations will be addressed in the NEPA analysis of direct, indirect, and cumulative impacts for each permitted project.

Comment: The NEPA provides that certain extraordinary circumstances prevent agencies from categorically excluding actions, and four different extraordinary circumstances as set forth in the NEPA regulations apply in this case.

- There are potentially significant effects on future protection of important natural and cultural resources and migratory birds (43 CFR 46.215(b)).
- Highly controversial effects (43 CFR 46.215(c)).
- Highly uncertain and potentially significant effects becoming more uncertain further into the future (43 CFR 46.215(d)).
- A decision in principle with potentially significant effects (43 CFR 46.215(e)).

Response: As explained above, the Service has reviewed our reliance upon this categorical exclusion against DOI's list of extraordinary circumstances, at 43 CFR 46.215. We have found that none apply to this final rule. The NEPA compliance conducted in support of any permit issuance will also address the topics highlighted in the extraordinary circumstances cited by the commenter.

Comment: The lack of reliable scientific data on golden eagle populations warrants an analysis under NEPA.

Response: The 2009 EA acknowledged the lack of reliable scientific data on golden eagle populations and set conservative regional thresholds for annual permitted take of eagles in light of that lack of reliable data. The Service anticipates that scientific data quality on eagle population dynamics will continue to improve and any new information and data will be considered during the NEPA review for future permit determinations.

Comment: Separate, comprehensive regulations should be developed for wind power along with a robust NEPA process. In the meantime, until such NEPA analysis is conducted, programmatic permits for wind energy facilities should be considered interim measures and the 5-year tenure limit should be retained.

Response: Development of comprehensive regulations governing wind power development and operations is beyond the Service's authority. The Service has the authority under BGEPA to authorize take of eagles in the course of otherwise legal activities. The Service may develop eagle permit regulations specifically tailored to wind-energy projects in the future. If the Service chooses to develop such regulations, it will comply with NEPA at that time and review the anticipated impacts of such regulations.

Comment: The cost and time associated with conducting a NEPA analysis for each individual permit may be excessive, particularly when combined with the up-front permit application and advance payment of administrative fees. Other permits issued by the Service do not require NEPA review without typical NEPA-triggering criteria. The

Service should consider conducting a programmatic NEPA review of the permit process rather than each permit individually.

Response: We conducted a general NEPA review of the permit process in 2009 when we first issued new regulations authorizing incidental take of eagles, and established thresholds for permit issuance. That NEPA analysis presented a general environmental review of the impacts of issuing permits under all the Service's eagle permit regulations, including the permits authorized by the 2009 regulations. The purposes of NEPA may be better served when the impacts of, and alternatives to, specific activities authorized by permits are considered and analyzed individually at the appropriate time.

Fees—application processing and administrative

Comment: There should be no permit application and administration fees. To the extent that the Service has either a mandatory or discretionary duty to issue incidental take permits, the Service should seek Congressional appropriations to support those regulatory functions.

Response: Issuance of incidental take permits is a discretionary function for the Service. Permits are special services with benefits that apply to specific individuals or companies (the permittees). Both Congress and OMB have directed Federal agencies to recoup the costs of permit issuance and other special services directly from the recipients of those permits and other services, not through appropriations, to prevent American taxpayers from having to bear those costs.

Comment: The administration fee should not be fixed because the costs are certain to increase significantly over 30 years.

Response: Costs are likely to rise, so the administration fee may not always recoup Service expenditures. However, we cannot predict exactly how much costs will increase. Allowing for a "floating" fee would be difficult to administer and could increase administrative costs. Also, a fixed fee provides more certainty to permittees.

Comment: An initial smaller fee should be paid upon submission of the permit application with the entire fee being paid if the permit is approved.

Response: The purpose of the application processing fee is to cover the costs to the Service for resources and staff time needed to review the application. The cost should, as much as possible, be borne by the applicant, not the taxpayer. For that reason, the fee is designed to capture the full anticipated cost of reviewing the application, including providing technical assistance prior to submittal of the application. Those costs are not necessarily higher if the application is approved and a permit is issued.

Comment: The entire administration fee should be collected at the time the permit is issued.

Response: We intend to collect the administration fee for each 5-year interval every 5 years, as we evaluate and certify permits. This will eliminate the need to refund portions of an administrative fee if a project stops operations or if a permit is suspended or revoked.

Comment: Fees should be at least partially refunded if a permit is revoked.

Response: See the two previous responses.

Comment: For some permit applicants, the initial permit fee may create a financial burden that could be alleviated by spreading payments in installments over multiple years.

Response: What the commenter refers to as a permit fee is actually a permit application processing fee. Because it is intended to cover the cost of providing both technical assistance leading up to an application being submitted and the review of the application, we need to collect the fee when the application is filed.

Comment: The large fee, in combination with uncertainty about what will be required, is likely to be a deterrent to applying for a permit. There have been no prosecutions of wind companies for taking eagles; if there are no consequences for taking eagles, and the application fees will dramatically increase, why will companies suddenly apply for permits?

Response: Wind energy companies are not exempt from the Eagle Act or MBTA prohibitions against take. Though there have been no prosecutions of wind companies for take of eagles, investigations are ongoing.

Comment: The Service needs to propose the definition of "small impact" for public notice and comment before finalizing it. Further, the definition of small impact needs to be clearly defined and quantified in regulation in terms of eagle take numbers, project size, risk category, or other relevant criteria to ensure applicants are fully advised regarding the costs of permit applications as well as to avoid future conflicts over what permits qualify for the lower fee.

Response: Proposing a specific definition may have been helpful for generating comment. We received no input during the public comment period that would help to define "small impact." Moreover, because the term "small impact" was confusing, we have replaced it with "low-risk." In the preamble, we clarify that the "low-risk" category is designed to substantially reduce permit application processing fees for projects that we

can identify, without committing substantial staff resources, as likely to have minimal or no impacts to eagles even though take is possible over the lifetime of the project.

Comment: It is unclear whether the size standards established by the Small Business Administration (SBA) will be the basis for assessing small-impact projects.

Response: No, the SBA size standards are based on a variety of factors, none of which impacts eagles. The idea behind our proposed "small impact" project category—now called "low-risk"—is to reduce permit application processing fees for projects that we can identify without committing substantial staff resources, as likely to have minimal or no impacts to eagles even though take is possible over the lifetime of the project.

Comment: Small projects can have large impacts, particularly cumulatively. Application of a category for small-impact projects, unless carefully administered, would reduce the Service's oversight and ability to assess cumulative impacts, and could be used to avoid appropriate conservation measures.

Response: We agree that is important to have a sound basis for categorizing some projects as small impact to reduce the possibility that such projects take more eagles than anticipated or have large impacts cumulatively. Accordingly, the definition of "low-risk" that we are adopting is based on the magnitude of impacts to eagles, and the existence of sound predictive tools to estimate the impacts.

Comment: "Small impact" projects should be subject to administration fees so the Service will have oversight to ensure the projects are not having greater impacts than anticipated.

Response: We agree with this comment. Because "low-risk" permits will require some monitoring and reporting, there will be costs to the Service as we review the reports. We expect that most low-risk projects will not take any eagles, but in rare cases when take occurs, there may be a need to assess potential measures a permittee can take to further reduce the likelihood of additional take. To cover what we anticipate to be typical post-issuance costs to the Service, holders of low-risk permits will be assessed an administration fee of $500 every 5 years.

Comment: Fees collected should be used to increase enforcement of Eagle Act violations.

Comment: Some of the fees should be allocated to the States to help them defray the costs of surveys and monitoring they do that the Service relies on. If there are unused funds (e.g., if a project does not continue for the duration of the original permit tenure), they should be banked and distributed to States.

Comment: The Service should consider the cost/benefit of transferring some of the permit administrative costs to on-the-ground mitigation, particularly for industries that may not be able to front-load the permit processing and administrative fees.

Response: The Service's Office of Law Enforcement is funded independently of the Migratory Bird Program, which promulgates and administers Eagle Act permits and regulations. To recover the cost of administering these permits, the Migratory Bird Program will need to retain the full amount of the permit application processing fee. The fees cannot be distributed to the States or used for mitigation.

Comment: The Service should clarify whether the intent of the fee structure is to require a permit for multiple facilities in a project or whether each individual facility,

regardless of whether it is developed or owned by the same entity, is required to obtain a permit. A combined permit for utilities that have multiple facilities or large service territories would minimize the workload and cost for FWS by avoiding multiple applications from the same company for different projects and would streamline reporting and permit administration under one permit. It also would afford protection to eagles and other migratory birds across a larger geographic area.

Response: Permits will normally be required for individual facilities that are likely to take eagles. Different projects in different locations would require different (additional) analyses.

Comment: Fees should be structured to cover the Service's costs of monitoring and compliance for *the life of the project*. As proposed, the fees appear to be too low to enable the Service to adequately monitor or enforce the permits. A comprehensive cost analysis should be prepared by the agency.

Response: We will observe how the program operates once long-term permits are issued and monitoring begins. If the fees prove to be inadequate, we can revise them in a future rulemaking.

Comment: The Service should consider using cost reimbursement agreements in lieu of an application fee. These mechanisms, which are frequently used for development of environmental analyses under NEPA and right-of-way and special use authorizations on public lands, can more closely track the actual cost of processing permit applications.

Response: As the program matures, and the actual costs of administering permits are demonstrated, a cost-reimbursement process can be considered.

Comment: Is the cost and time of the NEPA review covered in the cost of the application? If the NEPA cost is not covered in the application fee, can the FWS please address the anticipated additional costs in the economic analysis, including direct cost of NEPA review and associated costs of timing delays?

Response: The permit application processing fee is designed to cover the cost of NEPA review.

Transferability of permits

Comment: The proposed language allowing permits to be transferred says that the Service will "negotiate such permits if successive owners agree to the terms of the permit." The word "negotiate" implies that the Service may seek to impose additional restrictions via the terms of the permit as a condition of the transfer. This effectively reduces the value of the permit.

Response: The phrase the commenter is concerned about is not in the regulations, but only in the preamble. We did not intend it to imply that the transfer will introduce new opportunities to impose additional restrictions. We used the word consistent with the following definitions found in the Merriam-Webster Online Dictionary: "to confer with another so as to arrive at the settlement of some matter;" "to deal with (some matter or affair that requires ability for its successful handling): manage."

Comment: Permits should not be transferable. New owners of facilities should have to reapply and be approved through the same process the original owner traveled.

Response: The commenter did not give a reason why he or she believes permits should not be transferable if the successor is subject to the some terms and conditions as the original permittee. We also do not see a good argument against allowing transfer, and

we see good reasons to allow it. Land and businesses frequently change hands. Requiring a new permit application at transfer would be overly burdensome to the parties involved, including the Service, without providing any conservation benefit to eagles.

Comment: The proposed regulations allow for a transfer of the permit to a new owner, and also allow an extension of the permit to anyone authorized to carry out the permittee's activities. The Department of the Interior compares this proposed arrangement to the right of transfer and extension afforded State and local governments, but private companies are not required to consider the public interests the way governments do, and should not be given the same powers.

Response: The provision being objected to in this comment (50 CFR 13.25(d)) pre-dates this rulemaking and applies to all permits issued by the Service. Without this provision every employee and volunteer at any permitted business or organization would have to obtain his or her own permit, which would be overly burdensome and unnecessary because the permitted business/organization is already responsible for ensuring employees and volunteers comply with the permit.

Comment: A potential conflict could arise between the responsibilities of the original permit holder and the successor based on the requirement that the "successor…will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements." Placing the burden of outstanding minimization and mitigation requirements upon the successor may provide a disincentive for the original permit holder to complete all mitigation requirements. The permit holder should be responsible for all mitigation requirements incurred during the

period of their ownership, and all mitigation requirements should be up to date as of the time of permit transfer.

Response: When the successor agrees to the terms of the original permit, he becomes responsible for implementing any outstanding mitigation requirements. Any disincentive the original permit holder may experience for carrying out the terms of his or her permit would likely be balanced by his incentive to find a buyer willing to take on the permit and its outstanding legal obligations. We see no conservation benefit to requiring the responsibility to remain with the original permittee once a permit is transferred.

Comment: This proposed language lacks any reasonable specificity ensuring the successor or transferee permittee will be held accountable to the permit terms and conditions of the transferor. For permits to be transferable, there must be enforceable financial guarantees that permit conditions will be met by the permit holder. It is not enough for the Service to accept written assurances of "sufficient funding" without specifying what would constitute as qualifying written assurance. Also, the term "written assurances" is not only vague, but legally unenforceable and subject to arbitrary or inconsistent agency application.

Response: The participating parties will need to create appropriate legal instruments to allocate the rights and responsibilities of the transfer recipient(s), and we will review those documents for acceptability.

Post-construction monitoring

Comment: Each turbine must be closely monitored the first year in order to ensure monitoring and reporting is not "selective."

Response: The Service and USGS are conducting research into post-construction monitoring designs and will incorporate those findings into the requirements for such monitoring under permits. Our primary objectives are to ensure such monitoring is unbiased and provides meaningful estimates of actual fatalities, taking into consideration the anticipated risk of the project.

Comment: The permittee should provide funding to the Service to hire independent contractors to do the monitoring to ensure no bias. Self-monitoring is inherently unreliable. Permittees have a strong incentive to underreport. The Service will not have the resources to verify reporting unless the permittee is responsible for the cost.

Response: The Service relies on many permittees to self-monitor and self-report. We believe this is an effective way to collect information about project impacts to wildlife, including eagles. Failure to report required information could be a violation of a permit condition and result in revocation of the permit.

Comment: A standardized protocol for post-construction mortality monitoring should be required under long-term permits.

Response: Though there is no set protocol at present, USGS and the Service are further developing protocols as part of the adaptive management process under initial eagle take permits. The National Wind Coordinating Collaborative's comprehensive guide to studying wind energy–wildlife interactions provides a useful starting point to develop post-construction monitoring.

Comment: Under the current regulations at 50 CFR 22.26, post-construction monitoring may be required for up to 3 years. The duration of monitoring needs to be more flexible to account for the longer duration of projects.

Response: The regulations at 50 CFR 22.26(c) state that the Service may require post-construction monitoring and that permittees submit an annual report of such monitoring. For ongoing activities the monitoring may be required over the life of the activity or the term of the permit if long-term monitoring is necessary for adaptive management under the permit or if it is likely to provide data valuable for protecting eagles. The Service will make mortality information from annual monitoring reports submitted by permittees available to the public.

Comment: The permits should require wind facilities to allow government personnel access onsite to monitor for mortalities and verify that conservation measures are being implemented. Currently, many wind facilities deny anyone access and claim that their data are proprietary.

Response: All permits issued under § 22.26 allow "Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s)" (§22.26(c)(4)). Per 50 CFR 13.47, Service Law Enforcement officers do not need to give notice for site visits.

Comment: Nest occupancy monitoring should be required for the life of the permit.

Response: We disagree. We expect that if there is a disturbance effect on proximate nesting eagles, that effect will be most likely during construction and initial operation of the facility.

Comment: The Service should develop a set of standard monitoring and reporting requirements with regard to potential impacts on eagles of transmission and distribution

infrastructure to allow for effective planning and budgeting for utility projects. Permits for such projects should provide that monitoring may be terminated if no impacts have been identified or if impacts are likely to occur only over a certain period of time.

Response: Terminating monitoring altogether may not be prudent. Conditions change, and therefore the level of take may change. However, it seems reasonable that the frequency and/or extent of monitoring might be reduced after a period of time.

Comment: Proactive efforts by a utility to conduct surveys to identify high-risk electrocution areas for raptors will result in greater numbers of mortalities being discovered and reported. This greater effort would elevate numbers compared to years prior to surveys being conducted. Surveys may find mortalities due to other causes, such as shooting, vehicle collision, and lead poisoning, but which are discovered in advanced stages of decomposition/bones where cause of death cannot be determined, thereby elevating numbers reported. Utilities could be penalized for proactive survey efforts that cause the utility to exceed allowed take (i.e., "additional specified mitigation measures that would be triggered if the level of take anticipated is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles").

Response: The obligation to avoid taking eagles already exists under the Eagle Act and the MBTA; this rule merely provides for long-term permits to authorize such take. If surveys reveal the utility is taking large numbers of eagles, the utility will be responsible for measures to reduce take and to obtain permits for any take if they want to be in compliance with the Eagle Act. Permittees will not be held accountable for take that cannot reasonably be attributed to their activities.

Other

Comment: Public lands typically enjoy longer, more certain levels of protection from development than private lands. Therefore, it is particularly important that public lands remain as free from activities that can harm wildlife as is possible. The Service should refrain from issuing permits for large-scale incidental take of eagles on public land unless the land management agency agrees to a very specific plan of vigorous monitoring and enforcement of the permit terms.

Response: The permitted party will be responsible for monitoring, and the Service is responsible for enforcement, although land management agencies may assist, depending on where the project is located. Federal land management agencies have independent responsibilities to protect eagles and other migratory birds under Executive Order 13186, Responsibilities of Federal Agencies To Protect Migratory Birds (January 10, 2001). A programmatic permit does not authorize development, construction, or operation of any facility, only the take of eagles by the facility.

Comment: Even though wind power may ultimately be an important element for avoiding climate change, the Service should not issue permits for wind facilities built on ridge tops and eagle migration routes—even if that is where the best winds are.

Response: When an applicant initially approaches the Service, we advise them to collect information about eagle use of an area. Based on information collected and provided, the Service and applicant work together to avoid high eagle use areas. If surveys document eagles along ridge tops or eagle migration areas, those would likely be areas the Service would recommend avoiding. The Service will not issue a permit unless an activity can be made compatible with the conservation standards of the Eagle Act.

Comment: In the notice for its 2009 regulations, the Service said that it would, in coordination with States and Indian tribes, "develop monitoring and research adequate to both resolve current uncertainties in the data and to provide enhanced ability to detect the effects of the permit program." The Service should invest in a comprehensive management research program in partnership with the renewable energy community and other stakeholders to address information gaps.

Response: The Service has convened a technical assessment team consisting of technical experts from all Federal agencies with a stake in eagle conservation and the State fish and wildlife agencies to undertake this very task. The Service has invited tribes to participate in this process as well.

Comment: Permits that predate the extended permit tenure should not be extended beyond 5 years unless amended to comply with standards for 30-year permits.

Response: We agree. Existing 5-year permits will not automatically be extended. Any permittee with an already issued programmatic permit would need to apply for an extension and must comply with the standards for long-term permits established by this final rule to obtain a long-term permit.

Comment: Permitted wind energy facilities should be required to allow researchers on their premises to conduct studies aimed at reducing impacts to eagles as well as other migratory birds.

Response: Permitted facilities will be required to allow access by the Service and its agents. We will likely audit monitoring records of the permittee, and we may conduct our own monitoring. But we cannot extend this authority to other individuals or entities.

However, the data collected under the post-construction monitoring and provided to the Service as required by a permit will be available to the public.

Comment: The Service should extend post-delisting monitoring of bald eagles beyond the current commitment of 20 years. It is critical to understand regional eagle population levels and trends, as well as sources of cumulative risk on the landscape when evaluating risks associated with a given permit application.

Response: Many of the surveys that were done while the bald eagle was listed as an endangered, and then a threatened, species were conducted by the States. Neither the Service nor most States have the resources to extend monitoring for a species that is relatively healthy, when surveys and monitoring are much needed for other species that may be in peril.

Comment: The Service should commit to convening periodic meetings of scientists and State wildlife agency personnel with knowledge of regional eagle population levels and trends to share data and develop recommendations for allowable take levels by region, prior to changing current permitting practices.

Response: We do convene and participate in such meetings and agree they are of value.

Comment: The following statement is inaccurate: "Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants because of the known risk to eagles from collision with wind turbines and electric power lines." Collisions with transmission lines are not commonly documented for golden eagles.

Response: We agree with this comment. Although collisions with transmission lines are not unheard of, we should have said: "Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants because of the known risk to eagles from collision with wind turbines and *electrocution on* power lines."

Comment: The Service should consider developing a streamlined process for adding eagle take provisions to existing Special Purpose Permits that allow salvage of bird carcasses under power lines and at energy facilities. Such a process would likely increase utility participation due to time and cost efficiencies for permitting and consideration of sensitive or proprietary company information. Greater utility participation in this process would likely benefit eagle populations and aid the Service in meeting its no net loss thresholds by increasing the number of proactive pole retrofits.

Response: Electric utilities and energy companies with Special Purpose Permits that allow salvage of bird carcasses may find the process of applying for eagle take permits somewhat easier because of practices they have already established to qualify for the salvage permits. Such practices include implementation of good monitoring plans and protocols and a commitment to implementing measures to reduce take. However, there are very significant differences in the purpose, requirements, and criteria for the two types of permits, not the least of which is that the Special Purpose permits do not cover eagles, whereas the eagle take permits cover only eagles.

Comment: Permitted wind energy facilities should be required to allow salvage of dead birds [eagles] by holders of salvage permits subject to requirements that the

carcasses be turned over for law enforcement purposes and eagle carcasses be sent to the National Eagle Repository.

Response: Permitted wind energy facilities will be required to monitor for take at projects and to collect dead birds there. Salvage of birds at permitted wind energy facilities must be for purposes of accurately determining species fatality rates and determining whether individual turbines or strings of turbines are responsible for the majority of eagle fatalities. Salvage protocols should include standardized carcass searches, searcher efficiency trials, and carcass removal by scavenger trials. Allowing another party to pick up carcasses at these sites would interfere with such protocols.

Comment: A condition of permits to wind companies should be to pick up all dead birds as often as possible to minimize the risk to scavenging eagles.

Response: This requirement is likely to be a condition on most, if not all, programmatic permits.

Comment: If power line utilities are interested in applying for a programmatic take permit for their facilities or the construction of additional facilities, will the FWS be required to review the existing operations and maintenance for the existing infrastructure in order to issue a permit? Permit applicants with existing facilities (such as existing electrical systems) should be allowed to use their own proprietary eagle mortality data to estimate future eagle take rather than relying on theoretical modeling. Mortality estimates should be specific to the species and type of facility being considered. While companies with existing facilities and data would provide this data to the Service as part of the permit application, companies would require assurances from the Service regarding disclosure of sensitive, confidential, or proprietary information (including, but not limited

to, construction engineering and design, facility planning, mortality data, customer information, etc.).

Response: Eagle mortality data submitted with an application for a programmatic take permit would not be treated as confidential business information. Additionally, the Service expects to make eagle mortality information from annual reports and 5-year review compilation reports public.

Comment: The Service should take steps to streamline and expedite the process for making eagle permitting decisions. The lengthy and uncertain permitting process for wind development projects significantly compromises the industry's ability to attract financing and bring much-needed clean energy to market, and eagle permitting constitutes just one of a multitude of permitting hurdles developers face in moving projects forward. There should be an inter-agency consultation process similar to that provided by ESA section 7(a)(2).

Response: The inter-agency consultation process provided by ESA section 7(a)(2), which applies only to actions authorized, funded, or carried out by Federal agencies, is statutorily defined in the ESA and further clarified in agency ESA-implementing regulations. There is no statutory inter-agency consultation provision in the Eagle Act. The Service did not propose creating an ESA-like consultation process for eagle incidental take permits. As we move forward with additional modifications to the Eagle Act regulations, we will consider alternative processes for issuing take permits.

Comment: The Service should make permitting decisions on a regional scale where multiple projects are proposed, rather than issuing mortality permits to each facility.

Response: As noted above, permits will normally be issued to individual facilities that are likely to take eagles. Even for single-facility permits, our NEPA analysis will consider the cumulative impacts of all projects already operating in a given region. Where multiple projects are proposed in a given region or operated by a single company, we may issue a multi-facility permit. While each facility would be responsible for operation in accordance with the terms and conditions of the multi-facility permit, a comprehensive programmatic NEPA process at the regional scale where multiple projects are proposed would facilitate consistency between permit conditions for each operator and better address cumulative impacts. In such cases, project proponents must provide the Service with survey data and other additional information as part of programmatic permit applications. Therefore any multi-facility permits will ensure that the cumulative impacts of all the facilities included in such projects are taken into account.

FWS understands that some stakeholders prefer an alternative permit framework based on the concept of comprehensive "regional eagle conservation plans" where permits are issued based on regional population levels. Further, some stakeholders have suggested that the Service should work to develop these "regional eagle conservation plans" before beginning to issue 30-year permits. The Service agrees that the regional approach envisioned by such plans is appropriate and believes it has a permitting process that will ensure conservation at regional and local scales.

The 2009 Final Environmental Assessment describes how the Service will assess the effects of permitted activities on eagle populations. The 2009 Final Environmental Assessment used the best available information at the time to estimate regional populations and establish regional take thresholds needed to maintain stable or increasing

populations. Since we completed the Final Environmental Assessment, the Service has developed the Eagle Conservation Plan Guidance for Land-based Wind Energy (ECPG). The ECPG further elaborates on how we recommend wind project developers and operators collect information about eagle use near their projects as they prepare ECPs. We are assessing project impacts on eagles relative to local area populations, which are smaller than BCRs for golden eagles or Bald Eagle Management Units. Bald eagle local area populations are the number of eagles within 43 miles of a project. Golden eagle local area populations are with 140 miles of a project. We calculate eagle local area populations and consider all known sources of eagle fatalities within the local area as we assess cumulative impacts to local and regional eagle populations.

Service and U.S. Geological Survey biologists, as well as biologists at other agencies and universities, have been conducting, and continue to carry out, research on eagle populations, including at the regional scale. They have: 1) evaluated existing data on golden eagle population status and trends and published updated information; 2) worked towards developing models to predict golden eagle occurrence; 3) developed initial models to predict eagle mortalities at wind farms and methods to evaluate and update those predictive models as data on actual fatalities at permitted facilities become available; and 4) developed a general framework to test experimental measures to reduce eagle fatalities at operating wind facilities with programmatic eagle take permits. Agencies have also conducted or sponsored aerial nesting surveys of golden eagles in some states. Work is underway by various stakeholders to enhance understanding of mitigation and siting options, as well as monitoring strategies. As these research projects

advance, they will provide the Service additional information on which to base permit, policy, and regulatory decisions related to national eagle conservation.

For the above stated reasons, we believe there is a process in place that builds on insight from the 2009 Final Environmental Assessment and the ECPG (including best management practices and take thresholds for regional eagle management units) to make informed determinations regarding issuance of eagle take permits for up to 30 years. Moreover, with particular focus on the highest priority regions, and considering the best emerging research as it becomes available, we will continue working to improve our understanding of sustainable population levels, monitoring plans, and siting/mitigation strategies in order to better inform our permitting decisions. In addition to the above, project proponents must provide the Service with survey data and other additional information as part of programmatic permit applications. For the above stated reasons, we believe there is a process in place to make informed determinations regarding issuance of eagle take permits for up to 30 years.

An additional consideration is that comprehensive regional conservation plans would likely require redirecting significant resources and take several years to complete. This could in turn slow the issuance of eagle permits currently under review to new and existing operators, and impinge on our ability to maximize learning opportunities that will provide conservation benefits to eagles under these initial permits. We believe the conservation gains achieved by working with operators through the permitting process are of the highest importance, and therefore should take precedence in the allocation of staff resources.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish 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 businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a

significant economic impact on a substantial number of small entities. Most community-scale and distributed wind facilities and other small entities are not likely to take eagles or need an eagle take permit, so this rule will not affect those small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action will not have a significant economic impact on a substantial number of small entities.

Since the eagle permit regulations were published we have received few programmatic permit applications for utility-scale wind energy facilities. As noted previously, we anticipate a greater volume of permit applications in the future, although we expect the number to increase gradually for several years and perhaps eventually reach an average of 40 or fewer per year. Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants, because of the known risk to eagles from collisions with wind turbines and electrocution on power lines.

Many wind project developers and operators are by definition "small entities." The SBA Small Business Size Standards identify a utility engaged in electric power generation and electric power distribution as a small entity if its total output for the preceding fiscal year did not exceed 4 million megawatt hours (13 CFR 121.201). The total installed utility-scale windpower in the U.S. at the end of 2012 was 60,007 megawatts (American Wind Energy Association 2013). Based on the SBA standard, we

estimate that a substantial number of wind power applicants for programmatic permits will be small entities. Given current domestic wind energy cumulative wind capacity and other wind energy industry statistics, we anticipate that a substantial number of applicants for programmatic permits for wind energy projects will be small entities as defined in 13 CFR 121.201, such as industrial building construction companies with less than $33.5 million of annual receipts, and electrical generating companies with less than 4 million megawatt hours of generation, transmission, and/or distribution.

We anticipate that most of the applications will be from larger facilities. Community scale and distributed wind facilities that use smaller tower and rotor blades are unlikely to pose a risk to take eagles if sited responsibly, and may not need eagle take permits.

An applicant for a programmatic permit would pay a $36,000 processing fee to apply for a permit up to 30 years. Additionally a permittee would pay an administration fee ranging from $2,600 to $15,600, depending upon the permit tenure. Amortized over the life of a 30-year permit, this would range from $167 per year to $1,720 per year. We believe most applicants will seek a 30-year permit to match the life of the project. We do not believe this would impose a significant economic impact on these small entities.

Although businesses in other business sectors, such as railroads, timber companies, and pipeline companies, could also apply for programmatic permits, we anticipate the number of permit applicants in such sectors to be very small, on the order of one or two per year for each such sector. Thus, we anticipate that the rule will not have a significant economic impact on a substantial number of small entities in sectors other than the utility sector as described above.

In addition to the increased application processing fee, the additional specified mitigation measures that could be required under the terms and conditions of permits issued with a term of longer than 5 years could result in some additional costs to the permittee, but those costs should be offset by the reduction in uncertainty for the permittee achieved by securing a 30-year programmatic permit rather than a 5-year standard permit. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. The regulatory revisions will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule will not have significant takings implications. This rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations change.

Civil Justice Reform

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

Paperwork Reduction Act

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements associated with migratory bird permits, including 5-year eagle take programmatic permits, and assigned OMB Control Number 1018-0022, which expires February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This rule contains new information collection requirements

associated with long-term eagle take programmatic permits. OMB has approved these new requirements and assigned OMB Control Number 1018-0151, which expires October 31, 2016.

We have revised the regulations for permits for take of golden eagles and bald eagles where the take is associated with, but not the purpose of, the activity. We have extended the maximum term for programmatic permits to 30 years, if they incorporate conditions requiring the permittee to implement additional adaptive conservation measures, if necessary, to ensure the preservation of eagles. This change will facilitate the development of renewable energy and other projects that are designed to be in operation for many decades. This change will also provide more certainty to project proponents and their funding sources, while continuing to protect eagles consistent with statutory mandates. We have also increased the application processing fee for most programmatic permits from $1,000 to $36,000. See "Permit Application Processing Fee and Administration Fee," above, for more detailed information on the increase in permit fees.

Title: Long-Term Eagle Take Programmatic Permits, 50 CFR 13 and 22.

OMB Control Number: 1018-0151.

Service Form Numbers: 3–200–71 and 3–202–15.

Type of Request: New collection.

Description of Respondents: Individuals; businesses; and State, local, and tribal governments. We expect that the majority of applicants seeking a 30-year permit will be in the energy production and electrical distribution business.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Estimated Number of Respondents	Estimated Number of Annual Responses	Completion Time per Response	Total Annual Burden Hours
Application*	20	20	452	9,040
Monitoring and Reporting	20	20	312	6,240
Recordkeeping	20	20	30	600
Amendments	3	3	70	210
Transfers	3	3	120	120
Totals	66	66		16,210

* Includes researching permit requirements, conducting preapplication surveys/studies, and completing the application form.

Estimated Total Nonhour Burden Cost: $688,000, based primarily on application processing fees, as well as fees for amendments to permits and for transfer of permits. States, local governments, and tribal governments are exempt from paying these fees.

When this final rule is effective, we will incorporate the burden for the new information collection requirements into OMB Control No. 1018-0022 and discontinue OMB Control Number 1018-0151.

You may send comments on any aspect of these information collection requirements to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 2042-PDM, Arlington, VA 22203 (mail) or *hope_grey@fws.gov* (e-mail).

National Environmental Policy Act

This rule is excluded from further NEPA analysis in an Environmental Assessment or an Environmental Impact Statement under Department of the Interior categorical exclusion 43 CFR 46.201(i), which excludes from further NEPA analysis "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case." Several provisions of

this rule are specifically administrative or financial in nature, and therefore, subject to the first part of this categorical exclusion. For instance, the implementation of a new fee schedule, the adjustments to the permit transfer and right of succession requirements, and the reduction of the administrative burdens and duplication of effort represented by the extension of permit duration to a possible 30-years, instead of the current 5-year limit, under which proponents of longer-term projects must apply for, and the FWS review permits more frequently.

The extension of the allowable permit duration from 5 to 30 years is subject to the second part of this categorical exclusion. Issuance of a permit of any duration for take of eagles requires compliance with NEPA. The environmental effects of each project, including whether the applicant has adequately reduced and mitigated environmental effects over the specific permit duration requested, will be analyzed in more detail at that time. A 50 CFR 22.26 eagle permit must contain permit conditions and be supported by an appropriate NEPA analysis to ensure the underlying project or action will continue to meet regulatory requirements. Furthermore, any authorized take must meet the Eagle Act's preservation standard throughout the entire duration of the permit, whether it is 5 years or 30 years. A permit with a duration of 30 years is, thus, likely to contain more conditions than a permit with a duration of 5 years to ensure continued compliance over the longer time span, including conditions that incorporate adaptive management principles, and be supported by appropriate NEPA analysis to account for reasonably anticipated changed circumstances. 43 CFR 46.145 sets forth the Service's NEPA obligations when adaptive-management principles are used to mitigate the uncertainty of long-term impacts. If the original NEPA documents supporting the permit decision did

not adequately address the full range of potential revisions to the ACPs, or substantive new permit conditions are added, revisions would require additional NEPA review to support a decision on the revised permit. Additional conditions may include specific mitigation measures, possibly including additional compensatory mitigation requirements, that are triggered if actual take caused by the project exceeds anticipated take or to account for a reduction in local or regional eagle populations. Moreover, if such conditions prove inadequate at any time, the Service is authorized to amend permits as necessary under both paragraph (c)(7) of 50 CFR 22.26—establishing that the Service may amend and even revoke permits as necessary to safeguard eagle populations—and paragraph (b) of general permit regulation 50 CFR 13.23, under which the Service may amend a permit for just cause at any time upon a written finding of necessity.

Finally, pursuant to 43 CFR 46.205(c), we have reviewed our reliance upon this categorical exclusion against the Department of the Interior's list of extraordinary circumstances, at 43 CFR 46.215, and have found that none apply to this final rule.

As explained above, the rule's impacts are primarily administrative in nature and any potential environmental effects of extending the permit duration will be addressed by permit conditions that ensure the Eagle Act's preservation standard and all regulatory requirements will continue to be met throughout the permit's duration, whether it is 5 years or 30 years. Therefore, this rulemaking is not expected to have any potentially significant environmental effects on future protection of eagles or other environmental resources. Similarly, the effects of this rule are not highly controversial as they mainly involve procedural alterations to regulatory permit provisions that are not anticipated to have any meaningful or significant environmental effects on eagle populations. While it

is true that the anticipated impact of a particular project is likely to be harder to predict over 30 years than over 5 years, the permit conditions for longer-term permits will incorporate adaptive management principles (for example, triggers requiring additional measures for changed circumstances) designed to ensure that the project will continue to meet all permit requirements throughout the permit's duration. The conditions in each individual permit must ensure that the project will continue to meet the requirements of the permit regulations whatever the individual permit's duration.

For all these reasons, further NEPA analysis in an Environmental Assessment or an Environmental Impact Statement of this change to the regulations is not required.

Endangered and Threatened Species

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (16 U.S.C. 1536(a)(1)). It further states that the Federal agency must "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" (16 U.S.C. 1536(a)(2)). This rule, which amends the regulations governing administration of the permitting process under the Eagle Act, will not affect endangered or threatened species or designated critical habitat. The rule simply increases the number of years that a programmatic permit may be valid under certain conditions and requires the Service to conduct 5-year reviews to monitor compliance with the permit conditions. However, consultation under ESA Section 7 may be required prior to issuance of a permit for an individual project. If a project is expected

to result in take of any listed species, the permit applicant would need an incidental take authorization under ESA Section 7 or 10.

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), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that this rule will not interfere with tribes' abilities to manage themselves, their funds, or tribal lands.

Some tribes that value eagles as part of their cultural heritage objected to the promulgation of the 2009 eagle take permit rule based on the belief that the regulations would not adequately protect eagles. Those tribes may perceive further negative effects from these proposed changes. However, eagles would be sufficiently protected under this rule because permits with terms longer than 5 years will be issued only to those applicants who commit to adaptive management measures to ensure the preservation of eagles, except for applicants who are able to implement scientifically proven measures to significantly reduce take at the time the permit is issued (e.g., electric utilities issued permits that require full implementation of Avian Powerline Interaction Committee-approved measures to minimize take of migratory birds and eagles).

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule will facilitate the funding, construction, and operation of numerous energy generation projects, including wind

power facilities, the rule is not a significant regulatory action under E.O. 13211, and no Statement of Energy Effects is required.

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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 are amending subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

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

AUTHORITY: 16 U.S.C. 668a, 704, 712, 742j–l, 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. Revise the table in § 13.11(d)(4) to read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) * * *

Type of Permit	CFR Citation	Permit Application Fee	Administration Fee[1]	Amendment Fee
Migratory Bird Treaty Act				
Migratory Bird Import/Export	50 CFR 21	75		
Migratory Bird Banding or Marking	50 CFR 21	No fee		
Migratory Bird Scientific Collecting	50 CFR 21	100		50
Migratory Bird Taxidermy	50 CFR 21	100		
Waterfowl Sale and Disposal	50 CFR 21	75		
Special Canada Goose	50 CFR 21	No fee		
Migratory Bird Special Purpose/Education	50 CFR 21	75		
Migratory Bird Special Purpose/Salvage	50 CFR 21	75		
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75		
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100		
Falconry	50 CFR 21	100		
Raptor Propagation	50 CFR 21	100		
Migratory Bird Rehabilitation	50 CFR 21	50		
Migratory Bird Depredation	50 CFR 21	100		50
Migratory Bird Depredation/ Homeowner	50 CFR 21	50		
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR 22	100		50
Eagle Exhibition	50 CFR 22	75		
Eagle Falconry	50 CFR 22	100		
Eagle—Native American Religion	50 CFR 22	No fee		
Eagle Take permits—Depredation and Protection of Health and Safety	50 CFR 22	100		
Golden Eagle Nest Take	50 CFR 22	100		50
Eagle Transport—Scientific or Exhibition	50 CFR 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR 22	No fee		
Eagle Take—Associated With But Not the Purpose of an Activity	50 CFR 22	500		150
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, low-risk projects, 5- to 30-year tenure[2]	50 CFR 22	8,000	500	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, up to 5-year tenure	50 CFR 22	36,000	2,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 5-year to 10-year tenure	50 CFR 22	36,000	5,200[3]	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 10-year to 15-year tenure	50 CFR 22	36,000	7,800[3]	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 15-year to 20-year tenure	50 CFR 22	36,000	10,400[3]	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 20-year to 25-year tenure	50 CFR 22	36,000	13,000[3]	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 25-year to 30-year tenure	50 CFR 22	36,000	15,600[3]	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Transfer of a programmatic permit	50 CFR 22	1,000		
Eagle Nest Take	50 CFR 22	500		150

Eagle Nest Take—Programmatic	50 CFR 22	1,000		500
Eagle Take—Exempted under ESA	50 CFR 22	No fee		
Endangered Species Act/CITES/Lacey Act				
ESA Recovery	50 CFR 17	100		50
ESA Interstate Commerce	50 CFR 17	100		50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50		25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50		25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100		50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100		50
ESA and CITES Museum Exchange	50 CFR 17	100		50
ESA Captive-bred Wildlife Registration	50 CFR 17	200		100
—Renewal of Captive-bred Wildlife Registration	50 CFR 17	100		
CITES Import (including trophies under ESA and MMPA)	50 CFR 17, 18, 23	100		50
CITES Export	50 CFR 23	100		50
CITES Pre-Convention	50 CFR 23	75		40
CITES Certificate of Origin	50 CFR 23	75		40
CITES Re-export	50 CFR 23	75		40
CITES Personal Effects and Pet Export/Re-export	50 CFR 23	50		
CITES Appendix II Export (native furbearers and alligators—excluding live animals)	50 CFR 23	100		50
CITES Master File (includes files for artificial propagation, biomedical, etc., and covers import, export, and re-export documents)	50 CFR 23	200		100
—Renewal of CITES Master File	50 CFR 23	100		
—Single-use permits issued on Master File	50 CFR 23	5[4]		
CITES Annual Program File	50 CFR 23	50		
—Single-use permits issued under Annual Program	50 CFR 23	5[4]		
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50		50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	75[5]		
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	100[5]		
CITES Introduction from the Sea	50 CFR 23	100		50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	No fee		
CITES Registration of Commercial Breeding Operations for Appendix-I Wildlife	50 CFR 23	100		
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator)	50 CFR 23	No fee		
Import/Export License	50 CFR 14	100		50
Designated Port Exception	50 CFR 14	100		50
Injurious Wildlife Permit	50 CFR 16	100		50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25		

Wild Bird Conservation Act (WBCA)				
Personal Pet Import	50 CFR 15	50		
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100		50
WBCA Approval of Cooperative Breeding Program	50 CFR 15	200		100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50		
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	250[6]		
Marine Mammal Protection Ac				
Marine Mammal Public Display	50 CFR 18	300		150
Marine Mammal Scientific Research/ Enhancement/ Registered Agent or Tannery	50 CFR 18	150		75
—Renewal of Marine Mammal Scientific Research/ Enhancement/ Registered Agent or Tannery	50 CFR 18	75		

[1] Assessed when a permit is issued.
[2] "Low-risk" means a project or activity is unlikely to take an eagle over a 30-year period and the applicant for a permit for the project or activity has provided the Service with sufficient data obtained through Service-approved models and/or predictive tools to verify that the take is likely to be less than 0.03 eagles per year.
[3] $2,600 assessed upon approval of permit, and for each 5-year review.
[4] Each.
[5] Per animal.
[6] Per species.

* * * * *

3. Amend § 13.24 by revising paragraph (c) to read as follows:

§ 13.24 Right of succession by certain persons.

* * * * *

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B, the successor's authorization under the permit is also subject to our determination that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for any applicable conservation measures, conservation plan, or

Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as we determine is relevant to the processing of the request.

4. Amend § 13.25 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided we determine that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances of sufficient funding for the conservation measures, conservation plan, or Agreement, and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided other information that we determine is relevant to the processing of the submission.

* * * * *

(f) In the case of permits issued under § 22.26 of this subchapter B to a Federal, State, tribal, or local governmental entity, a person is under the direct control of the permittee if the person is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and conditions of the permit and the permit provides that such person(s) may carry out the authorized activity.

PART 22—EAGLE PERMITS

5. The authority for part 22 continues to read as follows:

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

6. Amend § 22.26 by:

a. Revising paragraph (c)(3) introductory text;

b. Revising paragraph (h); and

c. Adding paragraphs (i) and (j).

The revisions and additions read as follows:

§ 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.

* * * * *

(c) * * *

(3) You must submit an annual report summarizing the information you obtained through monitoring to the Service every year that your permit is valid and for up to 3 years after completion of the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed,

you must submit the report within 60 days of such date. The Service will make eagle mortality information from annual reports of programmatic permits available to the public. Reporting requirements include:

* * * * *

(h) *Permit reviews*. At no more than 5 years from the date a permit is issued, and every 5 years thereafter until a programmatic permit is due to expire in 5 or fewer years, the permittee will compile and submit to the Service, eagle fatality data or other pertinent information that is site-specific for the project, as required by the permit. The 5-year review will be comparable to the initial review of the permit application. The Service will make eagle-mortality information compiled in 5-year review reports available to the public. As part of the 5-year-review process, we will determine if trigger points specified in the permit have been reached that would indicate that additional conservation measures as described in a permit should be implemented to potentially reduce eagle mortalities, or if additional mitigation measures are needed. Additional post-implementation monitoring may be required to determine the effectiveness of additional conservation measures.

(1) During each 5-year review, we will reassess post-construction monitoring, fatality rates, effectiveness of measures to reduce take, the appropriate amount and effectiveness of compensatory mitigation, and the status of the eagle population.

(2) Depending on the findings of the review, we may make changes to a permit as necessary, including any of the following:

(i) update fatality predictions for the facility;

(ii) require implementation of additional conservation measures as described in the permit;

(iii) update monitoring requirements

(iv) revise compensatory mitigation requirements in accordance with the permit, or

(v) suspend or revoke the permit.

(3) In consultation with the permittee, we will determine compensatory mitigation for future years for the project, taking into account the observed levels of mortality and any anticipated reduction in mortality from additional conservation measures.

(i) *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 impacts to eagles, and the nature and extent of mitigation measures incorporated into the terms and conditions of the permit. Standard permits will not exceed 5 years. A permit for programmatic take will not exceed 30 years.

(j) *Transfer of programmatic permits.* Programmatic permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by the U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The transferee must meet all of the qualifications under this part for holding a permit, as well as the requirements of § 13.25(b) of this subchapter B.

Dated: November 18, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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