U.S. Fish and Wildlife Service Proposes Revisions to Eagle Take Permit Regulations


Under 50 C.F.R. part 22, eagle take permits may be standard or programmatic permits. Standard permits authorize individual takes that cannot practicably be avoided and occur during a limited timeframe, such as during clearing and construction for commercial or residential development or transportation projects. Programmatic permits authorize takes that recur over the long term, are not caused solely by indirect effects and are unavoidable even after implementation of advanced conservation practices. Programmatic permits may be issued for disturbance as well as mortality. The FWS anticipates that programmatic permits will be needed for wind, solar and other energy projects as well as electric utilities and timber operations. However, the FWS anticipates that most oil and gas operations will be better able to mitigate the potential for ongoing eagle takes and will likely not need programmatic permits due to the nature of the activity. Since the publication of the 2009 final rule, the FWS has issued approximately 50 standard permits under the regulations, but no programmatic permits.

PROGRAMMATIC PERMIT TERMS

Input from proponents of renewable energy projects and review of programmatic eagle permit applications made evident that the five-year term limit imposed under the FWS's 2009 regulations needed to be extended to better accommodate the timeframe for development of renewable energy projects. Thus, the FWS is amending 50 C.F.R. § 22.26(h) of its regulations to extend the term of programmatic permits from five years to 30 years to enable permitees to secure funding, lease agreements and other assurances to advance their projects. This change will not affect standard permits, whose maximum permit tenure will remain at five years; permits for the take of eagle nests, including programmatic nest take permits (under 50 C.F.R. §§ 22.25, 22.27); permits for the collection and possession of eagles and eagle parts for scientific purposes (under 50 C.F.R. § 22.21); permits for exhibition (under 50 C.F.R. § 22.21); permits for Native American religious use (under 50 C.F.R. § 22.22); and permits for depredation/health and safety (under 50 C.F.R. §§ 22.23) and falconry (under 50 C.F.R. § 21.29).

Due to the longer permit duration allowed for programmatic permits, the FWS intends to incorporate into the permit's terms and conditions a commitment from the applicant to implement additional specified mitigation measures that would be triggered in the event the anticipated level of take is exceeded or new scientific information reveals the need for new mitigation measures to preserve eagles. This would be in addition to the already required advanced conservation practices to avoid and minimize the take of eagles.

The FWS seeks public comment on how best to implement additional conservation measures, in addition to the already required advanced conservation practices, for longer-term programmatic permits in the least burdensome and most practicable way.

PERMIT FEES

The FWS is substantially increasing the fees collected under 50 C.F.R. § 13.11 for both the processing and administering of programmatic permits. The FWS proposes to increase the application fee from $1,000 to $36,000. Further, the FWS is proposing to add an administration fee for programmatic permits based on the duration of the permit to cover the costs associated with monitoring and working with the permittee over the life of the permit. The proposed administration fee ranges from $2,600 for permits with tenures of five years or less to $15,600 for 30-year permits.

The FWS is seeking suggestions for identifying and defining what constitutes “programmatic, small-impact” projects that are expected to result in the take of eagles over the life of their operation but that have negligible impacts on bald and golden eagle populations individually. The FWS is also seeking public comment on whether the fee proposal should be revised to consist of a processing fee that is paid upon submission of a permit application and an administration fee that is paid if the applicant is informed that the permit is approved, and whether the administration fee should be a one-time expense or spread over the life of the permit.

SUCCESSION AND TRANSFERABILITY OF PERMITS
The FWS is also proposing changes to its regulations governing the succession and transferability of permits under 50 C.F.R. §§ 13.24-13.25 to allow programmatic permits to be transferable to the new owner of a project and to ensure that successors to the permittee of a project commit to carrying out all permit conditions. Further, the FWS is expanding the requirements of 50 C.F.R. §13.24 for succession of permits to require that a permit be subject to the FWS's determination that the successor meets all of the qualifications for holding a permit under the regulations; has provided adequate written assurances for funding any conservation plans or agreements required under the permit; and will implement the relevant terms and conditions of the permit, including outstanding minimization or mitigation requirements.

All public comments to this proposed rule are due by May 14, 2012 and may be submitted by using (i) the Federal eRulemaking Portal at [http://www.regulations.gov](http://www.regulations.gov); (ii) U.S. mail; or (iii) hand delivery to the FWS.

**OTHER PROPOSED CHANGES TO THE EAGLE PERMIT REGULATIONS**

In addition, the FWS issued an advanced notice of proposed rulemaking ("ANPR") seeking public comment on ways to improve the 2009 final eagle permit regulations in general to create a more efficient process while continuing to adequately protect eagles. Eagle Permits; Revisions to Regulations Governing Take Necessary to Protect Interests in Particular Localities, 77 Fed. Reg. 22278, Docket No. FWS-R9-MB-2011-0094, (Apr. 13, 2012). The FWS will not consider any comments submitted in response to this notice that are related to the issues addressed in the other proposed rule discussed above. The FWS is seeking comment on any aspect of the permit program governed by 50 C.F.R. § 22.26 and is specifically interested in input on three main issues: (i) criteria for the issuance of standard and programmatic permits; (ii) compensatory mitigation; and (iii) the Eagle Act preservation standard.

All public comments to this ANPR are due by July 12, 2012 and may be submitted by using (i) the Federal eRulemaking Portal at [http://www.regulations.gov](http://www.regulations.gov); (ii) U.S. mail; or (iii) hand delivery to the FWS.

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