

## § 22.3

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

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

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

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

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

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

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

### § 22.3 Definitions.

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

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

*Area nesting population* means the number of pairs of golden eagles known

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to have a resting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

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

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

*Disturb* means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

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

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

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

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

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

*Inactive nest* means a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at

present. An inactive nest may become active again and remains protected under the Eagle Act.

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

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

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

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

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

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

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

*Programmatic take* means 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.

*Resource development or recovery* includes, but is not limited to, mining, timbering, extracting oil, natural gas and geothermal energy, construction of roads, dams, reservoirs, power plants, power transmission lines, and pipelines, as well as facilities and access routes essential to these operations, and reclamation following any of these operations.

*Safety emergency* means a situation that necessitates immediate action to alleviate a threat of bodily harm to humans or eagles.

*Take* means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.

*Territory* means an area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles.

*Transportation into or out of the United States* for the purpose of this part means that the permitted item or items transported into or out of the United States do not change ownership at any time, they are not transferred from one person to another in the pursuit of gain or profit, and they are transported into or out of the United States for Indian religious purposes, or for scientific or exhibition purposes under the conditions and during the time period specified on a transportation permit for the items.

[39 FR 1183, Jan. 4, 1974, as amended at 48 FR 57300, Dec. 29, 1983; 64 FR 50472, Sept. 17, 1999; 72 FR 31139, June 5, 2007; 74 FR 46876, Sept. 11, 2009]

#### § 22.4 Information collection requirements.

(a) The Office of Management and Budget approved the information collection requirements contained in this part 22 under 44 U.S.C. 3507 and assigned OMB Control Number 1018-0022 and 1018-0136. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information necessary to evaluate permit applications. We will use this information to review permit applications and make decisions, according to criteria established in the Bald and Golden Eagle Protection Act and its regulations, on the issuance, suspension, revocation, or denial of permits. You must respond to obtain or retain a permit.

(b) Direct comments regarding any aspect of these reporting requirements to the Service's Information Collection