



Billing Code 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–HQ–MB–2015–0155; FF09M21200-167-FXMB123209EAGL0L2]

RIN 1018–BB20

Eagle Permits; Removal of Regulations Extending Maximum Permit Duration of Programmatic Nonpurposeful Take Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that had the effect of vacating provisions of regulations governing eagle nonpurposeful take permits that extended the maximum term of programmatic permits to 30 years. Pursuant to the U.S. District Court for the Northern District of California’s order dated

August 11, 2015, and subsequent order amending judgment dated September 16, 2015, this rule removes regulatory provisions that extended maximum programmatic permit duration to 30 years and reinstates the previous 5-year limit.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2015–0155. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Headquarters Office, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803. Call (703) 358–2329 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Eagle Program Manager, at the Headquarters Office (see **ADDRESSES**) or telephone (703) 358–2329. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

In 2009, the Service published a rule authorizing the incidental take of eagles under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (74 FR 46836, September 11, 2009). The rule authorized programmatic permits to cover long-term, incidental take of eagles by individual projects, including wind-energy facilities. On December 9, 2013, the Service

published a rule to extend the maximum tenure for programmatic permits for nonpurposeful take of eagles from 5 to 30 years (78 FR 73704). The change was intended to promote the responsible development of projects that will be in operation for many decades and bring them into compliance with statutory mandates protecting eagles. In addition to extending the maximum term of programmatic permits, the rule added provisions for 5-year evaluations of longer term permits, increased the permit application processing fees for programmatic eagle permits, and provided permit transfer and right-of-succession for eagle nonpurposeful take permits.

In 2014, a lawsuit was filed challenging the 2013 rule on the basis that the Service improperly excluded analysis of any environmental effects of the rule under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) by invoking one of the Department's categorical exclusions. The plaintiffs also argued that the Service had not adequately consulted under section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.).

On August 11, 2015, the Northern District of California ruled in favor of the plaintiffs on the NEPA claim (but not the ESA claim) and set aside the 2013 rulemaking (*Shearwater v. Ashe*, (N. D. Cal. 2015) No.14-CV-02830-LHK (N. Dist. Ca, Aug. 11, 2015)). In a subsequent order, the judge clarified that the ruling applied only to the provisions of the rule challenged by plaintiffs, namely those provisions directly related to extending the tenure of eagle incidental take permits from 5 to 30 years (*Shearwater v. Ashe*, No. 5:14-cv-02830 LHK (Sep. 16, 2015)). Therefore, this rule removes only the provisions related to increasing permit tenure and not the other provisions of the December 9, 2013, final rule.

Administrative Procedure

This rulemaking is necessary to comply with the August 11, 2015, court order and September 16, 2015, clarification. Therefore, under these circumstances, we have determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. Public opportunity for comment is simply not required when an agency amends a regulation to comply with a court order. When an agency removes regulatory provisions set aside by a court order, that action is ministerial in nature and allows for no discretion on the part of the agency. Thus, public comment could not inform this process in any meaningful way. Moreover, this amendment will effectively reinstate provisions that were part of the earlier 2009 rulemaking, which complied with public notice and comment rulemaking procedures, rendering further notice and comment on those reinstated provisions unnecessary. We have further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication, which is to comply with the District Court's order as soon as practicable.

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

To comply with the court order and mandate discussed above, we amend 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 citation for part 13 continues to read as follows:

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

2. Revise the table in § 13.11(d)(4) to read as set forth below:

§ 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 part 21	75		
Migratory Bird Banding or Marking	50 CFR part 21	No fee		
Migratory Bird Scientific Collecting	50 CFR part 21	100		50
Migratory Bird Taxidermy	50 CFR part 21	100		
Waterfowl Sale and Disposal	50 CFR part 21	75		
Special Canada Goose	50 CFR part 21	No fee		
Migratory Bird Special Purpose/Education	50 CFR part 21	75		

Migratory Bird Special Purpose/Salvage	50 CFR part 21	75		
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR part 21	75		
Migratory Bird Special Purpose/Miscellaneous	50 CFR part 21	100		
Falconry	50 CFR part 21	100		
Raptor Propagation	50 CFR part 21	100		
Migratory Bird Rehabilitation	50 CFR part 21	50		
Migratory Bird Depredation	50 CFR part 21	100		50
Migratory Bird Depredation/ Homeowner	50 CFR part 21	50		
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR part 22	100		50
Eagle Exhibition	50 CFR part 22	75		
Eagle Falconry	50 CFR part 22	100		
Eagle—Native American Religion	50 CFR part 22	No fee		
Eagle Take permits—Depredation and Protection of Health and Safety	50 CFR part 22	100		
Golden Eagle Nest Take	50 CFR part 22	100		50
Eagle Transport—Scientific or Exhibition	50 CFR part 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR part 22	No fee		
Eagle Take—Associated With But Not the Purpose of an Activity	50 CFR part 22	500		150
Eagle Take—Associated With But Not the Purpose of an Activity— Programmatic, up to 5-year tenure	50 CFR part 22	36,000	2,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity— Transfer of a programmatic permit	50 CFR part 22	1,000		
Eagle Nest Take	50 CFR part 22	500		150
Eagle Nest Take—Programmatic	50 CFR part 22	1,000		500
Eagle Take—Exempted under ESA	50 CFR part 22	No fee		

Endangered Species Act/CITES/Lacey Act				
ESA Recovery	50 CFR part 17	100		50
ESA Interstate Commerce	50 CFR part 17	100		50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR part 17	50		25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR part 17	50		25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR part 17	100		50
ESA and CITES Import/Export and Foreign Commerce	50 CFR part 17	100		50
ESA and CITES Museum Exchange	50 CFR part 17	100		50
ESA Captive-bred Wildlife Registration	50 CFR part 17	200		100
—Renewal of Captive-bred Wildlife Registration	50 CFR part 17	100		
CITES Import (including trophies under ESA and MMPA)	50 CFR parts 17, 18, 23	100		50
CITES Export	50 CFR part 23	100		50
CITES Pre-Convention	50 CFR part 23	75		40
CITES Certificate of Origin	50 CFR part 23	75		40
CITES Re-export	50 CFR part 23	75		40
CITES Personal Effects and Pet Export/Re-export	50 CFR part 23	50		
CITES Appendix II Export (native furbearers and alligators—excluding live animals)	50 CFR part 23	100		50
CITES Master File (includes files for artificial propagation, biomedical, etc., and covers import, export, and re-export documents)	50 CFR part 23	200		100
—Renewal of CITES Master File	50 CFR part 23	100		
—Single-use permits issued on Master File	50 CFR part 23	5 ²		
CITES Annual Program File	50 CFR part 23	50		

—Single-use permits issued under Annual Program	50 CFR part 23	5 ²		
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR part 23	50		50
CITES Passport for Traveling Exhibitions and Pets	50 CFR part 23	75 ³		
CITES/ESA Passport for Traveling Exhibitions	50 CFR part 23	100 ³		
CITES Introduction from the Sea	50 CFR part 23	100		50
CITES Participation in the Plant Rescue Center Program	50 CFR part 23	No fee		
CITES Registration of Commercial Breeding Operations for Appendix-I Wildlife	50 CFR part 23	100		
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator)	50 CFR part 23	No fee		
Import/Export License	50 CFR part 14	100		50
Designated Port Exception	50 CFR part 14	100		50
Injurious Wildlife Permit	50 CFR part 16	100		50
—Transport Authorization for Injurious Wildlife	50 CFR part 16	25		
Wild Bird Conservation Act (WBCA)				
Personal Pet Import	50 CFR part 15	50		
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR part 15	100		50
WBCA Approval of Cooperative Breeding Program	50 CFR part 15	200		100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR part 15	50		
WBCA Approval of a Foreign Breeding Facility	50 CFR part 15	250 ⁴		
Marine Mammal Protection Act				
Marine Mammal Public Display	50 CFR part 18	300		150
Marine Mammal Scientific Research/ Enhancement/ Registered Agent or Tannery	50 CFR part 18	150		75

—Renewal of Marine Mammal Scientific Research/ Enhancement/ Registered Agent or Tannery	50 CFR part 18	75		
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¹ Assessed when a permit is issued.

² Each.

³ Per animal.

⁴ Per species.

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PART 22--EAGLE PERMITS

3. The authority citation 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.

4. Amend § 22.26 as follows:

a. By removing paragraph (h);

b. By redesignating paragraphs (i) and (j) as paragraphs (h) and (i); and

c. By revising the newly designated paragraph (h) to read as set forth below:

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

* * * * *

(h) *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 mitigation measures, but will not exceed 5 years.

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Dated: February 2, 2016

____Karen Hyun_____

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016-03084 Filed: 2/16/2016 8:45 am; Publication Date: 2/17/2016]