Bald and Golden Eagle Protection Act (Eagle Act) Compliance

January 2015

Federal Status

The Eagle Act (16 U.S.C. 668-668c), has prohibited take of Bald Eagles since 1940 and Golden Eagles since 1962. Take means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb. Such restrictions help ensure the future viability of eagles in the wild.

Under the Eagle Act, “disturb,” is defined as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, injury to an eagle, a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior” (Federal Register 72: 31132, June 5, 2007). “Substantial interference” was not defined in regulation but refers to interference at or above the level that that causes eagles to abandon their nest or that causes injury or loss of productivity. “Injury” could be the direct result of the interference, such as a nestling being knocked from the nest by a startled adult, or in can be indirect, such as a nestling that is fed inadequately because the adults are agitated when in the vicinity of the nest. Loss of productivity refers to a situation where reproductive output is reduced.

The Service issued new regulations in 2009 (Federal Register 74: 46835-46879; September 11, 2009) that allow permits to take eagles under the Eagle Act where “take is associated with, but not the purpose of the activity, and cannot practicably be avoided.”

Most take authorized under this section will be in the form of disturbance; however, permits may authorize lethal take that results from, but is not the purpose of, an otherwise lawful activity.

State Status:

Golden Eagles are a “fully protected species” in California and may not be taken or possessed at any time. However, in accordance with the 2011 Senate Bill 618, CDFW may now issue permits authorizing the incidental take of fully protected species under the California Endangered Species Act, so long as any take authorization is issued in conjunction with the approval of a Natural Community Conservation Plan (NCCP) that covers the fully protected species.

Both Bald and Golden Eagles are Species of Conservation Priority in Nevada.

Compliance:

Template Discussion:

Include the following text in the WSFR compliance documentation if there is any potential for eagles to occur within a 10-mile radius of the project:

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Recommendation for compliance review:

Per the Eagle Act, it is the Service’s goal to ensure that activities that may affect eagles are implemented in such a manner to be consistent with the goal of stable or increasing breeding populations. However, unless an entity is applying for a permit under the Eagle Act, the Service does not have any requirements that are outside of regulations. In accordance with existing Service guidance, we recommend compliance documentation include an assessment of the relative importance of the project footprint and adjacent areas of up to a 10 mile radius for resident breeding and non‐breeding eagles, and to migrant and wintering eagles. Determination should be based upon existing information from publicly available literature, databases, and other sources, and to determine the potential for any take of eagles. Where available, data analysis should include presence of active and inactive nests, including evidence of any active territories in the last 5 years. This is particularly important in the context of new activities that may cause disturbance vs. continuation of ongoing activities. Recommended sources include but are not limited to:

* California Department of Fish and Wildlife, BIOS. <http://www.dfg.ca.gov/biogeodata/bios/>

Password protected. For the monthly password, for Service staff contact Tony McKinney (Tony\_McKinney@fws.gov), for CDFW staff contact Sandra Summers (Sandra.Summers@wildlife.ca.gov)

* Nevada Department of Wildlife eagle data: Currently available only upon request via Chet VanDellen, NDOW GIS specialist, cvandellen@ndow.org.
* Personal communication of raptor experts.

A golden eagle database is being developed through the CA-NV Golden Eagle Working Group. When available, this should be the best source for the best scientific information available within the region.

WSFR compliance documents to include data sources for any determinations regarding the potential for the presence of eagles and potential for take, disturbance being the most likely. Including the data source in the compliance document is important to ensure the most current information was evaluated. Data for eagles, particularly golden eagles, continues to be updated.

If either eagle species may be present and potential for disturbance to occur, include a list of avoidance and minimization measures to be incorporated into the project. WSFR staff should provide technical assistance, in consultation with ES or MBP staff, where warranted.

Disturbance Avoidance Measures:

Bald Eagle – The Service’s National Bald Eagle Guidelines should be followed and included as a condition of grant approval when warranted. These guidelines include appropriate buffers for activities that may disturb bald eagles. These guidelines may be shared with our external partners.

Golden Eagle – The Bald Eagle Guidelines should not be applied to golden eagles due to behavioral differences between the two species. The Service’s Southwest Region has developed DRAFT Golden Eagle Management Guidelines which should be followed. **NOTE**: these guidelines are for internal use only. State biologists should contact the respective program GMS for additional guidance on appropriate avoidance/minimization measures for golden eagles. Where topography offers a visual barrier between the activity and active eagle nests, there may be more flexibility in the avoidance measures currently recommended. Service Migratory Bird Program biologists should be consulted on any projects where avoidance of disturbance is questionable.

In the event a grant application may include aerial surveys, Pagel et al., 2010, should be followed to minimize disturbance to any golden eagles in the area.

For the most current published information on golden eagle assessment protocols, see Driscoll, 2010.

Particular attention should be given to new projects which are introducing human disturbance into the area. This could vary from short term (e.,g, 6 month construction to permanent (e.g., new permanent boating facilities).

References:

Driscoll, D.E. 2010. Protocol for golden eagle occupancy, reproduction, and prey population assessment. American Eagle Research Institute, Apache Jct., AZ. 55pp.

Pagel, J.E., D.M. Whittington and G.T. Allen. 2010. Interim Golden Eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Birds, U.S. Fish and Wildlife Service.

U.S. Fish and Wildlife Service, 2007, National Bald Eagle Management Guidelines

U.S. Fish and Wildlife Service, Pacific Southwest Region, 2012.