

0047

D. JGM, SLC

Steve F. B.
J. Whitehead
K. Mutz



United States Department of the Interior

FISH AND WILDLIFE SERVICE
ECOLOGICAL SERVICES
2060 ADMINISTRATION BUILDING
1745 WEST 1700 SOUTH
SALT LAKE CITY, UTAH 84104-5110

RECEIVED
FEB 20 1986

IN REPLY REFER TO:

(ES)
MAIL STOP 65410

February 14, 1986

DIVISION OF
OIL, GAS & MINING

MEMORANDUM

To: Acting Deputy Administrator
Technical Services Center West
Office of Surface Mining
Denver, Colorado
ATTN: Richard Holbrook

From: Field Supervisor, Ecological Services
Salt Lake City, Utah

Subject: Raptor/Subsidence Monitoring Plan for Cottonwood Mine *willberg*

ACT/015/019
#2

The Fish and Wildlife Service (FWS) has had an opportunity to review the counter proposals by Utah Power and Light (UP&L), Utah Division of Oil, Gas, and Mining (DOG M) and suggested changes by the Utah Division of Wildlife Resources (UDWR) to our proposed draft monitoring plan. Rather than addressing each specifically, FWS will address specific items that one or all plans must incorporate to address our concerns.

Monitoring personnel: The proposals must specify that raptor surveys be completed by individuals very familiar with raptor biology and experienced in golden eagle nest surveys. These individuals should be acceptable to FWS or Utah Division of Wildlife Resources (UDWR), Price. Additionally, please note that the Manti-LaSal National Forest (FS) conditioned their acceptance of a variant to Special Lease Stipulation #15 in a letter to your office dated October 2, 1985. It states: "As a part of that approval, the U.S. Fish and Wildlife Service will conduct a monitoring program to document the extent and result of said subsidence on any eagle habitat affected." Your office will need to determine the acceptability of any other agency or personnel doing the monitoring work with the FS.

We have checked with our FWS enforcement division and were informed that no special permit to conduct raptor surveys will be required by FWS. UDWR may require a special permit, and if so, it will be the responsibility of the company or their consultant to obtain one if needed.

FILE COPY

Taking permit: We have reviewed aspects of this problem and study with FWS enforcement, Denver, Colorado. Their response; "they are obligated and willing to prosecute the loss of any nest due to subsidence unless loss is covered by permit under FWS regulations."

Certain data is required to determine whether a taking permit will be issued and mitigation required. Please refer to the attached materials. As currently stated, baseline surveys of a 10 mile radius will be conducted or have been conducted within the preceding 12 months to determine the local breeding population and will be the basis for issuing, denying, or conditioning a take permit (CFR 50-22, attached). We have not checked with FWS enforcement to determine whether our 1981-82 data will be an acceptable source of data. UP&L should anticipate that a baseline survey of 10 mile radius may be required.

Monitoring frequency: We recommend that nest productivity be monitored twice during the breeding season. This should occur approximately mid-incubation and mid to later nestling stages. This is needed to determine whether an aborted nesting attempt occurred and territorial relationships established. This data needs to be collected both on the Cottonwood Mine property and representative nests in the local population for comparative purposes. Our original proposal included what we considered to be the likely areas a displaced pair of eagles would nest in, if shifts in territory occurred. It will take several years of data to adequately identify territorial relationships. Additionally, because adjacent canyons have their own nesting assemblages and may have different habitat conditions, our original Straight Canyon Study Area was selected and is still considered the most acceptable. Because of the inherent small sample size of eagle pairs on the mine site that potentially is affected, the success or non-success of nesting probably cannot be statistically defended.

UDWR suggested substituting six 4 hour observation periods in Newberry Canyon from the ground, for the early spring helicopter flight. We do not agree with this proposal. First, surveys should be done in both canyons (discussed below). Secondly, the early survey is most important for establishing nesting attempts. We believe our two flight proposal is more effective and cost efficient.

Control and study sites: All nests subject to subsidence in Miller and Newberry Canyons must be included in the "study" block for determinations of impacts on nesting. This is primarily because it has not been determined that more than one pair exists for the two canyons. Secondly, only part of Miller Canyon may be suitable as a control site for subsidence monitoring because of the long term potential impacts of mining. The control site should not be mined under during the life of the mine. This would allow not just study during the first 5 years, but analysis of long term subsidence impacts to the cliffs and nests. We have concentrated on the first 2-3 years because this is when the major effects are expected to occur. We suggest that the study/control areas be comparatively reexamined at 10 year intervals for cliff subsidence.

Definitions: Attached are copies of definitions from CFR 50 as relates to this monitoring program for eagles and other raptors. Please note in 22.3, page 216, the definitions for "inactive nest" and "nesting attempt".

We would be happy to entertain other suggested improvements to this monitoring plan. The situation is dynamic and offers limited ways to obtain the necessary data. However, we believe incorporation of most of our original proposal is still the best alternative suggested considering the short time frame and the uncontrollable variables involved.

Please contact Clark Johnson at this office (FTS 588-5637) for further clarification of our recommendations or consultation on this or other matters.

Attachments

A handwritten signature in black ink, appearing to read "Robert L. Miller". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

- 2.11 Artificial Nest Site** - Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.

- 2.12 Natural Nest Site** - Nest located on natural structure or on natural or reclaimed substrate.

ACTION: If land in Federal ownership, deny permit.

ACTION: If land not in Federal ownership, issue permit with condition that disturbed land be restored for long-term reoccupancy by eagles. b/

- 2.2 Site Not Unique** - Nesting population density not extraordinary where fewer than 3 pairs had constructed or maintained nests during the preceding year within 3 miles of nest proposed to be taken.

- 2.21 Artificial Nest Site** - Nest located on man-made structure or on unreclaimed substrate.

ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.

- 2.22 Natural Nest Site** - Nest located on natural structure or on natural or reclaimed substrate.

ACTION: Issue permit with the condition that disturbed foraging habitat and, when feasible, nesting habitat be restored for the long-term reoccupancy by eagles. b/

Notes:

a/ The Service discourages the use of permanent man-made structures as golden eagle nesting sites. However, these structures may be used for mitigation purposes when the development of natural or reclaimed sites is not feasible.

b/ Use of artificial nest structures may not be considered as a mitigation measure except when there is an expectation of long-term benefit to the area nesting population.

J. Eugene Hester

Director, U.S. Fish and Wildlife Service

5-10-84
Date

U.S. FISH AND WILDLIFE SERVICE

PERMITS TO TAKE GOLDEN EAGLE NESTS - 50 CFR 22.25

Guidelines for Issuing Permits to Take Inactive Golden Eagle Nests Which Interfere with Resource Development or Recovery Operations

1. Nesting Population Low
 - 1 to 4 pairs known to have made nesting attempt during the preceding year within 10 miles of nest proposed to be taken.
 - 1.1 Habitat Limited
 - Other suitable nesting and foraging habitat not available for use by displaced eagles.
 - 1.11 Artificial Nest Site
 - Nest located on man-made structure or on unreclaimed substrate.
 - ACTION: Issue permit with the condition that alternative nest site be developed on natural or reclaimed substrate or on a permanent man-made structure within 10 miles of site. a/
 - 1.12 Natural Nest Site
 - Nest located on natural structure or on natural or reclaimed substrate.
 - ACTION: Deny permit.
 - 1.2 Habitat Not Limited
 - Other suitable nesting and foraging habitat available for use by displaced eagles.
 - 1.21 Artificial Nest Site
 - Nest located on man-made structure or on unreclaimed substrate.
 - ACTION: Issue permit with the condition that site be modified to discourage further eagle nesting for duration of operation.
 - 1.22 Natural Nest Site
 - Nest located on natural structure or on natural or reclaimed substrate.
 - ACTION: Issue permit with condition that disturbed land be restored for long-term reoccupancy by eagles. b/
2. Nesting Population Not Low
 - 5 or more pairs known to have made nesting attempt during preceding year within 10 miles of nest proposed to be taken.
 - 2.1 Site Unique
 - Extraordinary nesting density where 3 or more pairs had constructed or maintained nests during the preceding year within 3 miles of nest proposed to be taken.

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE AND PLANTS

PART 10—GENERAL PROVISIONS

Subpart A—Introduction

Sec.

- 10.1 Purpose of regulations.
10.2 Scope of regulations.
10.3 Other applicable laws.
10.4 When regulations apply.

Subpart B—Definitions

- 10.11 Scope of definitions.
10.12 Definitions.
10.13 List of Migratory Birds.

Subpart C—Addresses

- 10.21 Director.
10.22 Law enforcement offices.

AUTHORITY: Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281; Black Bass Act, sec. 5, 44 Stat. 576, as amended, 46 Stat. 846; Migratory Bird Treaty Act, sec. 3, 40 Stat. 755, Bald Eagle Protection Act, sec. 2, 54 Stat. 251; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73-74, 19 U.S.C. 1202, Schedule 1, Part 15D, Headnote, 2(d); "Tariff Schedules of the United States"; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042, unless otherwise noted.

SOURCE: 38 FR 22015, Aug. 15, 1973, unless otherwise noted.

Subpart A—Introduction

§ 10.1 Purpose of regulations.

The regulations of this Subchapter B are promulgated to implement the following statutes enforced by the U.S. Fish and Wildlife Service which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife:

Lacey Act, 18 U.S.C. 42-44.
Black Bass Act, 18 U.S.C. 851-856.
Migratory Bird Treaty Act, 16 U.S.C. 703-711.
Bald Eagle Protection Act, 16 U.S.C. 668-668d.
Tariff Classification Act of 1962, 19 U.S.C. 1202, (Schedule 1, Part 15D, Headnote 2, T.S.U.S.).

Endangered Species Conservation Act of 1969, 16 U.S.C. 668aa-668cc-6.
Fish and Wildlife Act of 1956, 16 U.S.C. 742a 1.
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1384, 1401-1407.

§ 10.2 Scope of regulations.

The various parts of this Subchapter B are interrelated, and particular note should be taken that the parts must be construed with reference to each other.

§ 10.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this Subchapter B. In addition, nothing in this Subchapter B, nor any permit issued under this Subchapter B, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other Service enforced statutes or regulations.

§ 10.4 When regulations apply.

The regulations of this Subchapter B shall apply to all matters arising after the effective date of such regulations, with the following exceptions:

(a) *Civil penalty proceedings.* Except as otherwise provided in § 11.25, the civil penalty assessment procedures contained in this Subchapter B shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

(b) *Permits.* The regulations in this Subchapter B shall apply to any permit application received after the effective date of the appropriate regulations in this Subchapter B and, insofar as appropriate, to any permit which is renewed after such effective date.

[38 FR 22015, Aug. 15, 1973, as amended at 39 FR 1159, Jan. 4, 1974]

Subpart B—Definitions

§ 10.11 Scope of definitions.

In addition and subject to definitions contained in applicable statutes and subsequent parts or sections of this Subchapter B, words or their variants shall have the meanings ascribed in this subpart. Throughout this Subchapter B words in the singular form shall include the plural, words in the plural form shall include the singular, and words in the masculine form shall include the feminine.

§ 10.12 Definitions.

"Aircraft" means any contrivance used for flight in the air.

"Amphibians" means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Animal" means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Birds" means a member of the class, Aves; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Service" means the United States Fish and Wildlife Service, Department of the Interior.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Crustacean" means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps,

crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Director" means the Director of the United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.

"Endangered wildlife" means any wildlife listed in § 17.11 or § 17.12 of this subchapter.

"Fish" means a member of any of the following classes:

(1) Cyclostomata, including, but not limited to, hagfishes and lampreys;

(2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and

(3) Pisces, including but not limited to trout, perch, bass, minnows, and catfish; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and including any part, product, egg, or offspring thereof.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Fossil" means the remains of an animal of past geological ages which has been preserved in the earth's crust through mineralization of the object.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not

such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Injurious Wildlife" means any wildlife for which a permit is required under Subpart B of Part 16 of this subchapter before being imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

"Mammal" means a member of the class, Mammalia; including any part, product, egg, or offspring, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in § 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

"Migratory game birds": See § 20.11 of this subchapter.

"Mollusk" means a member of the phylum, Mollusca, including but not limited to, snails, mussels, clams, oysters, scallops, abalone, squid, and octopuses; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Permit" means any document so designated as a permit by the Service and signed by an authorized official of the Service.

"Person" means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.

"Plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

"Possession" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the

proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"Public" as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

"Reptile" means a member of the class, Reptilia, including but not limited to, turtles, snakes, lizards, crocodiles, and alligators; including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

"Secretary" means the Secretary of the Interior or his authorized representative.

"Shellfish" means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Take" means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. (With reference to marine mammals, see Part 18 of this subchapter.)

"Transportation" means to ship, convey, carry or transport by any means whatever, and deliver or receive

for such shipment, conveyance, carriage, or transportation.

"United States" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Whoever" means the same as person.

"Wildlife" means the same as fish or wildlife.

[38 FR 22015, Aug. 15, 1973, as amended at 42 FR 32377, June 24, 1977; 42 FR 59358, Nov. 16, 1977; 45 FR 56673, Aug. 25, 1980]

§ 10.13 List of Migratory Birds.

The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations contained in this subchapter. The species listed are those included in the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T. S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, 50 Stat. 1311, T. S. No. 912; and the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States—Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990. The species are arranged alphabetically by groups, with the scientific name following the English language common name. All species of ducks are listed together under the heading "DUCKS".

Accentor, Mountain: *Prunella montanella*.

Albatross:

Black-footed *Diomedea nigripes*.

Laysan *Diomedea immutabilis*.

Short-tailed *Diomedea albatrus*.

White-capped *Diomedea cauta*.

Yellow-nosed *Diomedea chlororhynchos*.

Anhinga, American: *Anhinga anhinga*.

Ani:

Groove-billed *Crotophaga sulcirostris*.

Smooth-billed *Crotophaga ani*.

Auklet:

Cassin's *Ptychoramphus aleuticus*.

Crested *Aethia cristatella*.

Least *Aethia pusilla*.

Parakeet *Cyclorhynchus psittacula*.

Rhinoceros *Cerorhinca monocerata*.

Whiskered *Aethia pygmaea*.

Avocet, American: *Recurvirostra americana*.

Bittern:

American *Botaurus lentiginosus*.

Chinese Little *Izobrychus sinensis*.

Least *Izobrychus exilis*.

Malay *Gorsachius melanolophus*.

Schrenk's Little *Izobrychus eurhythmus*.

Blackbird:

Brewer's *Euphagus cyanocephalus*.

Red-winged *Agelaius phoeniceus*.

Rusty *Euphagus carolinus*.

Tawny-shouldered *Agelaius humeralis*.

Tricolored *Agelaius tricolor*.

Yellow-headed *Xanthocephalus xanthocephalus*.

Yellow-shouldered *Agelaius xanthomus*.

Bluebird:

Eastern *Sialia sialis*.

Mountain *Sialia currucoides*.

Western *Sialia mexicana*.

Bluethroat: *Luscinia svecica*.

Bobolink *Dolichonyx oryzivorus*.

Booby:

Blue-faced *Sula dactylatra*.

Blue-footed *Sula nebouxi*.

Brown *Sula leucogaster*.

Red-footed *Sula sula*.

Brambling: *Prinotilla montivirginilla*.

Brant (incl. Black Brant): *Branta bernicla*.

Bufflehead: see DUCKS.

Bullfinch:

Eurasian *Pyrrhula pyrrhula*.

Puerto Rican *Loxia portoricensis*.

Bunting:

Indigo *Passerina cyanea*.

Lark *Calamospiza melanocorys*.

Lazuli *Passerina amoena*.

McKay's *Plectrophenax hyperboreus*.

Painted *Passerina ciris*.

Rustic *Emberiza rustica*.

Snow *Plectrophenax nivalis*.

Varied *Passerina versicolor*.

Bush-tit: *Psittiparus minimus*.

Canvasback: see DUCKS.

Caracara, Audubon's: *Caracara cheriway*.

Cardinal, American: *Cardinalis cardinalis*.

Carib, Green-throated: *Scircotes holosericeus*.

Catbird, Gray: *Dumetella carolinensis*.

Chat:

Ground *Geothlypis poliocephala*.

Yellow-breasted *Icteria virens*.

Chickadee:

Black-capped *Parus atricapillus*.

Boreal *Parus hudsonicus*.

Carolina *Parus carolinensis*.

Chestnut-backed *Parus rufescens*.

Gray-headed *Parus cinctus*.

Mexican *Parus sclateri*.

Mountain *Parus gambeli*.

Chuck-will's-widow: *Caprimulgus carolinensis*.

Condor, California: *Gymnogyps californianus*.

Coot:

American *Fulica americana*.

Caribbean *Fulica caribaea*.

European *Fulica atra*.

§ 21.45

this area, except that any specimens needed for scientific purposes, as determined by the State or the Director shall not be destroyed.

(b) That any Commissioner of Agriculture exercising the privileges granted by this section shall keep records of the persons authorized by the Commissioner to kill such migratory birds, and the estimated number of such birds killed pursuant to the exercise of his authority, and the Commissioner shall submit a report thereof to the Director on or before December 31 of each year or whenever the Director so requests.

§ 21.45 Depredation order for depredating purple gallinules in Louisiana.

Landowners, sharecroppers, tenants, or their employees or agents, actually engaged in the production of rice in Louisiana, may, without a permit, shoot purple gallinules (*Ionornis martinica*) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons: *Provided:*

(a) That purple gallinules may only be killed pursuant to this section between May 1 and August 15 in any year.

(b) That purple gallinules killed pursuant to this section shall not be transported or sold or offered for sale except that, such transportation within the area, as may be necessary to bury or otherwise destroy the carcasses of such birds is permitted: *Provided*, That the Director or the State agricultural department, college, or other public institution may requisition such purple gallinules killed as may be needed for scientific investigations: *Provided further*, That any purple gallinules killed under authority of this section may also be donated to charitable institutions for food purposes.

(c) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations

Title 50—Wildlife and Fisheries

have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(d) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State of Louisiana.

(e) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereof, on or before December 31 of each year, to the Director.

§ 21.46 Depredation order for depredating scrub jays and Steller's jays in Washington and Oregon.

Landowners, sharecroppers, tenants, or their employees or agents actually engaged in the production of nut crops in Washington and Oregon may, without a permit, take scrub jays (*Aphelocoma coerulescens*) and Steller's jays (*Cyanocitta stelleri*) when found committing or about to commit serious depredations to nut crops on the premises owned or occupied by such persons: *Provided:*

(a) That scrub jays and Steller's jays may only be taken pursuant to this section between August 1 and December 1 in any year in the Washington counties of Clark, Cowlitz, and Lewis; and the Oregon counties of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill.

(b) That scrub jays and Steller's jays taken pursuant to this section shall not be transported or sold or offered for sale except that, such transportation within the area, as may be necessary to bury or otherwise destroy the carcasses of such birds is permitted: *Provided*, That the Director of the State agricultural department, college, or other public institution may requisition such scrub jays and Steller's jays killed as may be needed for scientific investigations.

Chapter I—United States Fish, Wildlife Service

§ 22.2

(c) That such birds may be taken only by trapping or shooting and on areas where serious depredations are being or are about to be committed.

(d) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(e) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the States of Washington and Oregon.

(f) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereof, on or before December 31 of each year, to the appropriate Special Agent in Charge (see § 10.22 of this subchapter).

[39 FR 31326, Aug. 28, 1974]

PART 22—EAGLE PERMITS

Subpart A—Introduction

- Sec.
- 22.1 Purpose of regulations.
- 22.2 Scope of regulations.
- 22.3 Definitions.

Subpart B—General Requirements

- 22.11 General permit requirements.
- 22.12 General restrictions.
- 22.13 [Reserved]

Subpart C—Eagle Permits

- 22.21 Permits for scientific or exhibition purposes.
- 22.22 Permits for Indian religious purposes.
- 22.23 Permits to take depredating eagles.
- 22.24 Permits for falconry purposes.

Sec.

- 22.25 Permits to take golden eagle nests.

Subpart D—Depredation Control Orders on Golden Eagles

- 22.31 Golden eagle depredations control order on request of Governor of a State.
- 22.32 Conditions and limitations on taking under depredation control order.

AUTHORITY: Sec. 2, Eagle Protection Act of June 8, 1940, Chapter 278, 54 Stat. 251; Pub. L. 87-884, 76 Stat. 1246; sec. 2, Pub. L. 92-535, 86 Stat. 1065; sec. 9, Pub. L. 95-616, 92 Stat. 3114 (16 U.S.C. 668a).

SOURCE: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 22.1 Purpose of regulations.

The regulations contained in this part govern the taking, possession, and transportation of bald and golden eagles for scientific, educational, and depredations control purposes and for the religious purposes of Indian tribes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this Subchapter B.

§ 22.2 Scope of regulations.

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported without a Federal permit, but may not be imported, exported, purchased, sold, traded, bartered, or offered for purchase, sale, trade or barter; and all shipments containing such birds, parts, nests, or eggs must be marked as provided by 18 U.S.C. 44 and § 14.81 of this subchapter: *Provided*, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

(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 wild-

§ 22.3

life (see also Part 13 of this subchapter).

§ 22.3 Definitions.

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

"Area nesting population" means the number of pairs of golden eagles known to have a nesting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

"Golden eagle nest" means any readily identifiable structure built, maintained or occupied by golden eagles for propagation purposes.

"Inactive nest" means a golden eagle nest that is not currently used by golden eagles as determined by the absence of any adult, egg, or dependent young at the nest during the 10 days before the nest is taken.

"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.

"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.

"Take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

[39 FR 1183, Jan. 4, 1974, as amended at 48 FR 57300, Dec. 29, 1983]

(1) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

Title 50—Wildlife and Fisheries

Chapter I—United States Fish, Wildlife Service

§ 22.22

Subpart B—General Requirements

§ 22.11 General permit requirements.

No person shall take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and Part 13 and under § 21.22 (banding or marking permits), or under a depredation order issued under Subpart D of this part.

§ 22.12 General restrictions.

No person shall sell, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, and no permit will be issued to authorize such acts.

§ 22.13 [Reserved]

Subpart C—Eagle Permits

§ 22.21 Permits for scientific or exhibition purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing taking, possession, or transportation of bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(a) *Application procedure.* Applications for permits to take, possess, or transport bald or golden eagles, their parts, nests or eggs for scientific or exhibition purposes shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(2) Specific locality in which taking is proposed, if any;

(3) Method taking proposed, if any;

(4) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

(5) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended;

(6) Complete explanation and justification of request, nature of project or study, number of specimens now at institution, reason these are inadequate, and other appropriate explanations.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take, possess, or transport bald or golden eagles for scientific or exhibition purposes, shall be subject to the following condition: In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 30 days after expiration of the permit.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, or transport bald or golden eagles for scientific or exhibition purposes unless he has determined that such taking, possession, or transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(3) Whether the justification of the purpose for which the permit is being requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for bona fide scientific or exhibition purposes of public museums,

public scientific societies, or public zoological parks.

(d) *Tenure of permits.* The tenure of permits to take bald or golden eagles for scientific or exhibition purposes shall be that shown on the face of the permit.

§ 22.22 Permits for Indian religious purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking, possession, and transportation of bald or golden eagles, or their parts, nests, or eggs for the religious use of Indians.

(a) *Application procedure.* Applications for permits to take, possess, and transport bald or golden eagles, their parts, nests, or eggs for the religious use of Indians shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Only applications from individual Indians will be accepted. Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and number of eagles or feathers proposed to be taken, or acquired by gift or inheritance.

(2) State and local area where the taking is proposed to be done, or from whom acquired.

(3) Name of tribe with which applicant is associated.

(4) Name of tribal religious ceremony(ies) for which required.

(5) Applicant must attach a certification from the Bureau of Indian Affairs that the applicant is an Indian.

(6) Applicant must attach a certification from a duly authorized official of the religious group that the applicant is authorized to participate in such ceremonies.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians shall be subject to the following conditions:

§ 22.23

(1) Bald or golden eagles or their parts possessed under permits issued pursuant to this section are not transferable, except such birds or their parts may be handed down from generation to generation or from one Indian to another in accordance with tribal or religious customs; and

(2) Permittees shall make such reports or submit inventories of eagle feathers or parts on hand as may be requested by the Special Agent in Charge.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians unless he has determined that such taking, possession, and transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald or golden eagles; and

(2) Whether the applicant is an Indian who is authorized to participate in *bona fide* tribal religious ceremonies.

(d) *Tenure of permits.* Any permit issued pursuant to this section under which the applicant is authorized to take eagles shall be valid during the period specified on the face thereof which shall in no case be longer than 1 year from date of issue. Any permit issued pursuant to this part which authorizes the permittee to transport and possess eagles or their parts shall be valid for the life of the permittee unless sooner revoked.

§ 22.23 Permits to take depredating eagles.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking of depredating bald or golden eagles.

(a) *Application procedure.* Applications for permits to take depredating bald or golden eagles shall be submitted to the appropriate Special Agent in Charge (Sec. § 13.11(b) of this subchapter). Each such application must contain the general information and

Title 50—Wildlife and Fisheries Chapter I—United States Fish, Wildlife Service

certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and number of eagles proposed to be taken;

(2) Location and description of property where taking is proposed;

(3) Inclusive dates for which permit is requested;

(4) Method of taking proposed;

(5) Kind and number of livestock or domestic animals owned by applicant;

(6) Kind and amount of alleged damage; and

(7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take depredating bald or golden eagles shall be subject to the following conditions:

(1) Bald or golden eagles may be taken under permit by firearms, traps, or other suitable means except by poison or from aircraft;

(2) The taking of eagles under permit may be done only by the permittee or his agents named in the permit;

(3) Any eagle taken under authority of such permit will be promptly turned over to a Service agent or other game law enforcement officer designated in the permit; and

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 10 days following completion of the taking operations or the expiration of the permit whichever occurs first.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take depredating bald or golden eagles unless he has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination the Director shall consider the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild population of bald or golden eagles;

(2) Whether there is evidence to show that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit, and the injury complained of is substantial; and

(3) Whether the only way to abate the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) *Tenure of permits.* The tenure of any permit to take bald or golden eagles for depredation control purposes shall be that shown on the face thereof, and shall in no case be longer than 90 days from date of issue.

§ 22.24 Permits for falconry purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the possession and transportation of golden eagles for falconry purposes.

(a) *Application procedure.* Applications for permits to possess and transport golden eagles for falconry purposes shall be submitted to the appropriate special agent in charge (see § 13.11(b) of this subchapter). Each application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A copy of the applicant's master (or equivalent) class permit issued in accordance with 50 CFR 21.28.

(2) A statement of the applicant's experience in handling large raptors, including the species, type of experience and duration of the activity in which the experience was acquired.

(3) At least two (2) letters of reference from individuals with recognized experience in handling and/or flying eagles. Each letter must contain a concise history of the author's experience with eagles. Eagle handling experience is defined as, but is not limited to, the handling of pre-Act birds, zoological specimens, rehabilitating eagles, or scientific studies involving eagles. Each letter must also assess the applicant's capability to properly care for the fly golden eagles in falconry, and recommend the issuance or denial of the permit.

(4) A description of the facilities in which golden eagles will be housed.

(5) If requesting an eagle(s) from the Service, applicants must specify the sex, age and condition of the eagle(s) they will accept.

(6) For eagles already legally possessed, a copy of the permit or other documentation authorizing possession of said birds, and the procedures to be used to minimize or eliminate hazards associated with the use of imprinted birds in falconry.

(7) Name, address, age and experience in handling raptors of any person the applicant proposes to act as an authorized agent in taking possession of golden eagles provided by the Service.

(8) To obtain additional or replacement golden eagles, a request in writing to the appropriate special agent in charge must be tendered, identifying the existing permit and, for replacement eagles, the reason for such replacement.

(b) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to possess and transport golden eagles for falconry purposes are subject to the following conditions:

(1) Golden eagles possessed for falconry purposes are considered as raptors and must be maintained in accordance with Federal falconry standards described in §§ 21.28 and 21.29 of this subchapter.

(2) Only golden eagles legally obtained may be possessed and transported for falconry purposes.

(3) Captive breeding of golden eagles possessed for falconry purposes is prohibited.

(4) The applicant, or authorized agent, must agree to take possession of a requested golden eagle(s) within 72 hours of notification of availability. Expenses incurred by the applicant in taking possession of said eagle(s) will be the applicant's responsibility.

(5) The golden eagle(s) must be banded with a numbered eagle marker provided by the Service.

(6) All permits issued pursuant to this section shall state on their face that eagles possessed for falconry purposes under authority of this permit may not be transferred or otherwise intentionally disposed of by any

§ 22.24

means, including release to the wild, without written approval from the appropriate regional director.

(7) All permits issued pursuant to this section shall state on their face that the appropriate special agent in charge must be notified no later than ten (10) days after the death of a permit holder.

(c) *More restrictive State laws.* Nothing in this section shall be construed to prevent a State from making and/or enforcing more restrictive laws and regulations as regards the use of golden eagles in falconry.

(d) *Issuance criteria.* The Director shall conduct an investigation and shall not issue a permit to possess and transport golden eagles for falconry purposes unless he has determined: that such possession and transportation is compatible with the preservation of golden eagles; that the proposed possession and transportation of golden eagles for falconry is not otherwise prohibited by laws and regulations within the State where the activity is proposed; and that the applicant is qualified to possess and transport golden eagles for falconry purposes. In making the latter determination, the Director shall consider, but shall not necessarily be limited to, the following:

(1) The applicant's cumulative falconry experience.

(2) The applicant's demonstrated ability to handle and care for large raptors.

(3) Information contained in the applicant's letters of reference.

(e) *Tenure of permits.* Any permit to possess and transport golden eagles for falconry purposes is valid for as long as the holder maintains a valid master (or equivalent) class falconry permit or until revoked in writing by the Service.

(f) *Permission to trap golden eagles for falconry purposes.* Applicants desiring to trap golden eagles from the wild for use in falconry must request and obtain permission from the Service prior to exercising this privilege. The following applies to requests:

(1) Only golden eagles from a specified depredation area may be trapped for falconry purposes.

(2) Permission to trap golden eagles must be requested in writing from the appropriate State Animal Damage Control (ADC) supervisor subsequent to issuance of the permit to possess and transport golden eagles for falconry purposes.

(3) Permission to trap will not be granted until the permittee suitably demonstrates to the State ADC supervisor or a designated project leader his/her qualifications and capabilities to trap golden eagles from the wild.

(4) All such trapping must be conducted under the direct supervision of the State ADC supervisor or designated project leader in the specified depredation area.

(5) Any permission to trap golden eagles from the wild pursuant to this section shall in no case extend more than 90 days from the date of issue.

(6) Upon issuance of permission to trap in accordance with the above conditions, the appropriate special agent in charge will be notified in writing by the State ADC supervisor of the individual's name, address, location of the specified depredation area and tenure of permission to trap golden eagles.

(The information collections contained in this § 22.24 are cleared by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned approval number 1018-0022. The information is necessary to determine potential permittee's qualifications and is required to obtain a permit)

[49 FR 891, Jan. 6, 1984]

§ 22.25 Permits to take golden eagle nests.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing any person to take golden eagle nests during a resource development or recovery operation when the nests are inactive, if the taking is compatible with the preservation of the area nesting population of golden eagles. The information collection requirements contained within this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This in-

formation will be used to review permit applications and make decisions, according to the criteria established in this section for the issuance or denial of such permits. The obligation to respond is required to obtain or retain a permit.

(a) *Application procedure.* Applications for permits to take golden eagle nests must be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this chapter). Applications are only accepted from persons engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Each application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

(1) A description of the resource development or recovery operation in which the applicant is engaged;

(2) The number of golden eagle nests proposed to be taken;

(3) A description of the property on which the taking is proposed, with reference made to its exact geographic location. An appropriately scaled map or plat must be included which delineates the area of the resource development or recovery operation and identifies the exact location of each golden eagle nest proposed to be taken. The map or plat must contain enough detail so that each golden eagle nest proposed to be taken can be readily located by the Service.

(4) For each golden eagle nest proposed to be taken, the applicant must calculate the area nesting population of golden eagles and identify on an appropriately scaled map or plat the exact location of each golden eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population. The map or plat must contain enough details so that each golden eagle nest used to calculate the area nesting population can be readily located by the Service.

(5) A description of each activity to be performed during the resource development or recovery operation which involves the taking of a golden eagle nest;

(6) A statement with any supporting documents from ornithologists experienced with golden eagles or other qualified persons who have made on site inspections and can verify the applicant's calculation of the area nesting population;

(7) The length of time for which the permit is requested, including the dates on which the proposed resource development or recovery operation is to begin and end;

(8) A statement indicating the intended disposition of each nest proposed to be taken. Applicants should state whether they are willing to collect any nest for scientific or educational purposes; and

(9) A statement indicating any proposed mitigation measures that are compatible with the resource development or recovery operation to encourage golden eagles to recoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any inactive golden eagle nest taken, or establishing one or more nest sites. If the establishment of one or more nest sites is proposed, a description of the materials and methods to be used and the exact location of each artificial nest site must be included.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this chapter, permits to take golden eagle nests are subject to the following additional conditions:

(1) Only inactive golden eagle nests may be taken.

(2) The permittee shall submit a report of activities conducted under the permit to the Director within ten (10) days following the permit's expiration;

(3) The permittee shall notify the Director in writing at least 10 days but not more than 30 days before any golden eagle nest is taken;

(4) The permittee shall comply with any mitigation measures determined by the Director to be feasible and compatible with the resource development or recovery operation; and

(5) Any permit issued before the commencement of a resource develop-

§ 22.31

ment or recovery operation is invalid if the activity which required a permit is not performed.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take any golden eagle nest unless such taking is compatible with the preservation of the area nesting population of golden eagles. In making such determination, the Director shall consider the following:

(1) Whether the applicant can reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest;

(2) The total number of golden eagle nests proposed to be taken;

(3) The size of the area nesting population of golden eagles;

(4) Whether suitable golden eagle nesting and foraging habitat unaffected by the resource development or recovery operation is available to the area nesting population of golden eagles to accommodate any golden eagles displaced by the resource development or recovery operation;

(5) Whether feasible mitigation measures compatible with the resource development or recovery operation are available to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any golden eagle nest taken, or establishing one or more nest sites; and

(6) Whether the area nesting population is widely dispersed or locally concentrated.

(d) *Tenure of permits.* The tenure of any permit to take golden eagle nests is 2 years from the date of issuance, unless a shorter period of time is prescribed on the face of the permit. Permits may be renewed in accordance with Part 13 of this chapter.

[48 FR 57300, Dec. 29, 1983]

Title 50—Wildlife and Fisheries

Subpart D—Depredation Control Orders on Golden Eagles

§ 22.31 Golden eagle depredations control order on request of Governor of a State.

(a) Whenever the Governor of any State requests permission to take golden eagles to seasonally protect domesticated flocks and herds in such State, the Director shall make an investigation and if he determines that such taking is necessary to and will seasonally protect domesticated flocks and herds in such States he shall authorize such taking in whatever part or parts of the State and for such periods as he determines necessary to protect such interests.

(b) Requests from the Governor of a State to take golden eagles to seasonally protect domesticated flocks and herds must be submitted in writing to the Director listing the periods of time during which the taking of such birds is recommended, and including a map of the State indicating the boundaries of the proposed area of taking. Such requests should include a statement of the facts and the source of such facts that in the Governor's opinion justifies the request. After a decision by the Director, the Governor will be advised in writing concerning the request and a notice will be published in the **FEDERAL REGISTER**.

§ 22.32 Conditions and limitations on taking under depredation control order.

(a) Whenever the taking of golden eagles without a permit is authorized for the seasonal protection of livestock, such birds may be taken by firearms, traps, or other suitable means except by poison or from aircraft.

(b) Any person exercising any of the privileges granted by this Subpart D must permit all reasonable times, including during actual operations, any Service agent, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require concerning such operations.

Chapter I—United States Fish, Wildlife Service

§ 23.3

(c) The authority to take golden eagles under a depredations control order issued pursuant to this Subpart D only authorizes the taking of golden eagles when necessary to seasonally protect domesticated flocks and herds, and all such birds taken must be reported and turned over to a local Bureau Agent.

Subpart E—Scientific Authority Advice [Reserved]

Subpart F—Export of Certain Species

- Sec.
- 23.51 American ginseng (*Panax quinquefolius*).
 - 23.52 Bobcat (*Lynx rufus*).
 - 23.53 River otter (*Lutra canadensis*).
 - 23.54 Lynx (*Lynx canadensis*).
 - 23.55 Gray wolf (*Canis lupus*).
 - 23.56 Brown bear (*Ursus arctos*).
 - 23.57 American alligator (*Alligator mississippiensis*).

AUTHORITY: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-43.

SOURCE: 42 FR 10465, Feb. 22, 1977, unless otherwise noted.

PART 23—ENDANGERED SPECIES CONVENTION

Subpart A—Introduction

- Sec.
- 23.1 Purpose of regulations.
 - 23.2 Scope of regulations.
 - 23.3 Definitions.
 - 23.4 Parties to the Convention.

Subpart B—Prohibitions, Permits and Exceptions

- 23.11 Prohibitions.
- 23.12 Requirements.
- 23.13 Exceptions.
- 23.14 Foreign documentation.
- 23.15 Permits and certificates.

Subpart C—Appendices I, II and III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

- 23.21 Criteria for listing species. [Reserved]
- 23.22 Procedures for amending the appendices. [Reserved]
- 23.23 Species listed in Appendices I, II and III.

Subpart D—Public Participation in the Development of Negotiating Positions for Meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Federal Agency Consultation

- 23.31 Purpose of regulations.
- 23.32 Notice of meeting of conference of the Parties to the Convention.
- 23.33 Notice of proposed negotiating positions.
- 23.34 Public meetings.
- 23.35 Notice of negotiating positions.
- 23.36 Schedule of public meetings and notices.
- 23.37 Federal Agency consultation.
- 23.38 Modification of procedures and negotiating positions.
- 23.39 Notice of availability of official report.

Subpart A—Introduction

§ 23.1 Purpose of regulations.

(a) The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249.

(b) The regulations identify those species of wildlife and plants included in Appendix I, II or III to the Convention.

§ 23.2 Scope of regulations.

(a) The regulations of this part apply only to wildlife and plants listed in Appendix I, II or III to the Convention, listed herein in § 23.23 for the convenience of the public. It should be noted that many species listed in Appendix I, II or III are also listed in Part 17 (endangered and threatened species) or Part 18 (marine mammals), and are subject to additional regulations in those parts or in Part 216 (marine mammals) or Parts 217-225 (endangered and threatened species) for species under jurisdiction of the National Marine Fisheries Service.

§ 23.3 Definitions.

In addition to the definitions contained in Parts 10 and 17 of this subchapter, and unless the context requires otherwise, in this part:

"Appendix I" means the list of wildlife and plants called "Appendix I"