

Endangered Species Act Regulations, and Policies ¹	Bald and Golden Eagle Protection Act Regulations, and Policies
Definition of “take”	
<p>“Take” under the ESA means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Harass is further defined to include an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is further defined to include an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).</p>	<p>“Take” includes to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb (50 CFR 22.3). “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, 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.</p>
<p>Actions that would significantly disrupt normal behavior patterns are not limited to breeding, feeding, or sheltering behavioral patterns.</p>	<p>Limited to “substantially interfering with breeding, feeding, or sheltering behavior.”</p>
<p>May include significant habitat modification or degradation; therefore, there are provisions for habitat conservation measures.</p>	<p>The definition itself includes only nest abandonment, but the rule also talks about important eagle use areas such as communal roosts and concentration areas. Does not provide for habitat conservation measures, but habitat manipulation that would result in disturbance may be indirectly regulated.</p>
<p>Not specifically tied to decrease in productivity by individuals.</p>	<p>Specific to decrease in productivity of individual birds.</p>
Reference for Evaluation	
<p>Not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats in the case of Federal agency actions.</p>	<p>Population-based. Goal of stable or increasing breeding populations. (Note: no designated critical habitat).</p>
Thresholds	
<p>Not routinely set or quantified at a population level.</p>	<p>Set and quantified at a population level.</p>
Cumulative Effects	
<p>Evaluation of cumulative effects under section 7 consultation does not include information on other future federal actions; they are assumed to be covered during consultations on the other actions (past activities addressed in baseline and cumulative).</p>	<p>Would include information regarding all past, present, and future actions, regardless of entity. However, for purposes of the FEA, past activities that continue to indirectly take eagles are addressed in the baseline.</p>
Evaluation process	
<p>Mandatory section 7 consultation on federal actions, sometimes requiring biological evaluation and biological opinion. Section 10 HCPs for non-federal actions, requiring plan and NEPA.</p>	<p>Optional discussions with Regional Permits Offices and/or Field Offices, and submittal of avoidance, minimization, and sometimes compensatory measures.</p>
Authorities	
<p>Both are federal statutes, with ultimately federal responsibilities.</p>	
Streamlining	
<p>‘Streamlining’ and ‘batching’ of section 7 consultations are encouraged and there is guidance available, as well as a recognized process.</p>	<p>Although not specific to the Eagle Act or its regulations, ‘streamlining the permitting process’ is mentioned in the Migratory Bird Strategic Plan. We will develop specific guidance in the implementation guidance for this rule.</p>

¹Table 1 from the Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act. U.S. Fish and Wildlife Management, Division of Migratory Bird Management. September 2009. 199 pp.