

**4VAC15-30-70. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of  
Animals: Incidental Take of Bird Species. (New)**

**Proposed Language of New Regulation:**

**4VAC15-30-70. Incidental Take of Bird Species. (New)**

**A. Purposes.** The purposes of this chapter are to:

1. Regulate the incidental take of regulated bird species and habitats, in the context of the board’s oversight authorities described in §29.1-501.A of the Code of Virginia and the department’s conservation and management authorities described in §29.1-521.A(2) and §29.1-521.A(10) of the Code of Virginia by establishing a regulatory framework for the administration, implementation, and enforcement of an incidental take permitting program;
2. Provide ample protections to regulated bird species and habitats while authorizing take that may occur incidental to regulated activities through the issuance of a general permit or an individual incidental take permit that stipulates best management practices with the intended purpose of avoiding, minimizing or mitigating incidental take; and
3. Delineate the procedures and requirements to be followed in connection with permits issued by the department, while providing flexibility for innovative solutions that avoid, minimize, or mitigate incidental take of regulated bird species and habitats, when such authorization meets the criteria of this chapter.

**B. Definitions.**

1. “Active nest” means any nest structure of a regulated bird species that contains one or more viable eggs incubated by attendant adults, or live dependent young, or is protected under the provisions of the federal Bald and Golden Eagle Protection Act.
2. “Applicant” means a person who is seeking or who has obtained an individual incidental take permit or general permit coverage through the department in accordance with procedures established in this section.
3. “Avian conservation and mitigation plan” means the plan that an applicant must submit under provisions of an individual incidental take permit that clearly defines the project’s scope of work, the project’s possible impacts on regulated bird species and/or habitats, and outlines in detail the implementation and evaluation of best management practices designed to avoid or minimize incidental take of regulated bird species and/or habitats, and/or, in certain circumstances, compensate for unavoidable take. Such measures may include, but are not limited to, existing or novel best management practices developed by the applicant for review by the department. The plan includes a timeline of when each element of the work plan will be performed and completed.

- 35 4. “Best management practices” refers to structural and non-structural measures  
36 designed to avoid, or minimize the incidental take of regulated bird species and/or  
37 habitats that may result from regulated activities during the construction and  
38 operational phases of the project.
- 39 5. “Board” means the Board of Wildlife Resources.
- 40 6. “Compensation” means achieving no net loss of regulated habitats through  
41 restoration, creation, enhancement, or, in certain circumstances, out-of-kind measures  
42 for the purposes of offsetting incidental take of regulated bird species and/or habitats  
43 that remain after all appropriate and practicable avoidance and minimization has been  
44 considered or achieved. Where permissible, appropriate compensation will be set  
45 forth in individual take permits or other board regulation or guidance. There will no  
46 compensation required under general permits.
- 47 7. “Construction impacts” refers to the incidental take of regulated bird species and/or  
48 habitats likely to occur during the construction phase of a regulated activity.
- 49 8. “Department” means the Department of Wildlife Resources.
- 50 9. “Endangered or threatened bird species” means those bird species listed as  
51 endangered or threatened pursuant to 4VAC15-20-130.
- 52 10. “General incidental take permit” or “general permit” refers to a type of permit issued  
53 by the department that authorizes incidental take of specified regulated bird species  
54 and/or habitats in association with regulated activities for which avoidance and  
55 minimization measures are deemed effective at achieving de minimis incidental take  
56 levels.
- 57 11. “Habitat type” refers to the classification of “regulated habitat” as either biologically  
58 significant avian habitat or general avian habitat.
- 59 a. “Biologically significant avian habitat” means regulated habitats within or  
60 directly adjacent to public or private conservation lands and waters, including,  
61 but not limited to, national wildlife refuges, national parks or seashores,  
62 national forests, national recreation areas, state wildlife management areas,  
63 state parks, state natural areas preserves, state recreation areas, and lands  
64 owner or under easement by conservation organizations; lands and waters that  
65 have been designated as biologically important, including, but not limited to,  
66 Coastal Avian Protection Zones, Important Bird Areas, Western Hemisphere  
67 Shorebird Reserve Network sites, and Marine Sanctuaries; and other lands and  
68 waters that encompass unique features deemed biologically important to  
69 regulated bird species by the department, including, but not limited to,  
70 streams, seeps, fens, marshes and other wetlands, riparian areas, cliffs, caves,  
71 and high-elevation forests and knobs.
- 72 b. “General avian habitat” means regulated habitats that are lands and waters not  
73 classified as “biologically significant avian habitat” but nonetheless require

74 evaluation using methods developed by the department to determine their  
75 biological value to regulated bird species.

- 76 12. “Incidental take” means take that is incidental to, but not the purpose of, a regulated  
77 activity.
- 78 13. “Individual incidental take permit” means a permit, issued by the department on a  
79 project-by-project basis that authorizes incidental take of regulated bird species  
80 and/or habitats for regulated activities that do not comply with the provisions of a  
81 general incidental take permit.
- 82 14. “Migratory bird species” means any species, or any active nest, or egg thereof,  
83 regulated by the federal Migratory Bird Treaty Act (16 U.S.C. §703 et seq.) or its  
84 attendant regulations.
- 85 15. “Permit” means any authorization designated as a “general incidental take permit” or  
86 “individual incidental take permit” issued by the department which authorizes  
87 incidental take of regulated bird species and/or habitats for regulated activities that  
88 are conducted in full compliance with all the terms and conditions therein.
- 89 16. “Person” means any individual, government entity, firm, corporation, association,  
90 partnership, club, or private body, any one or all, as the context requires.
- 91 17. “Regulated activity” or “activity” means a new construction or development activity  
92 or the expansion of an activity beyond the original or existing footprint of the activity  
93 for which the board has adopted a sector-specific plan that identifies best  
94 management practices designed to avoid or minimize incidental take of regulated bird  
95 species and/or habitats or, in certain circumstances, identifies the need for an  
96 individual incidental take permit.
- 97 18. “Regulated bird species” means any migratory bird species as defined above, or any  
98 active nest, or egg thereof, excluding any endangered or threatened bird species.
- 99 19. “Regulated habitat” means the area subject to a sector-specific plan, an avian  
100 conservation and mitigation plan, and/or an individual incidental take permit that  
101 includes both habitat types as defined herein.
- 102 20. “Sector-specific plan” means a framework for a general permit, adopted by regulation  
103 of the board, that defines the nature of authorized incidental take for regulated  
104 activities and outlines specific best management practices, schedules, and criteria for  
105 avoiding or minimizing incidental take, or, in certain circumstances, identifies the  
106 need for an individual incidental take permit. In the event of a conflict between this  
107 section and any sector-specific plan, the sector-specific plan shall control.
- 108 21. “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, capture, trap, collect,  
109 possess, destroy, disturb, or to attempt to engage in any such conduct, or any activity  
110 that significantly or permanently impedes breeding, foraging, resting, or other normal  
111 avian behaviors conducted during the annual life cycle, obstructs the use of or  
112 destroys or degrades regulated habitats, or reduces reproductive success or survival  
113 rates of regulated bird species, and includes any incidental take. Take excludes

114 deliberate harassment measures carried out for the sole purpose of deterring regulated  
115 bird species from the site of a regulated activity only when all other options to avoid,  
116 minimize, and/or mitigate incidental take have been considered and judged  
117 ineffective by the department.

118 C. Requirement for a permit. Except as provided in this section, it shall be unlawful for any  
119 person to conduct a regulated activity that results or will result in incidental take of a  
120 regulated bird species and/or habitat without obtaining and complying with such permit. No  
121 permit shall be available for incidental take of regulated bird species and/or habitats unless  
122 the board has adopted a sector-specific plan requiring such permit. The board may adopt  
123 sector-specific plans for any of the following categories:

- 124 1. Commercial projects, including, but not limited to, new construction or expansion of
  - 125 a. Retail stores/malls;
  - 126 b. Restaurants;
  - 127 c. Lodging facilities;
  - 128 d. Office buildings outside of an existing commercial park;
  - 129 e. Commercial parks;
  - 130 f. Medical facilities, including nursing homes, rehabilitation and convalescence  
131 centers;
  - 132 g. Sports facilities; and/or
  - 133 h. Other large-scale non-industrial structures and facilities planned for  
134 commerce, health care, hospitality services, government use, or other business  
135 use;
- 136 2. Industrial projects, including, but not limited to, new construction or expansion of
  - 137 a. Industrial manufacturing buildings outside of an existing industrial park;
  - 138 b. Industrial parks;
  - 139 c. Sewage treatment plants;
  - 140 d. Government facilities, such as warehouses and laboratories;
  - 141 e. Power generation plants, and/or
  - 142 f. Other large-scale non-commercial public, private, or governmental structures  
143 or facilities that directly engage in or are connected to the handling, storage,  
144 manufacturing, maintenance, treatment, or disposal of materials, products,  
145 goods, commodities, or hazardous waste;
- 146 3. Oil, gas, and wastewater disposal pits;
- 147 4. Methane or other gas burner pipes;
- 148 5. Communications towers;
- 149 6. Electric transmission and distribution lines;
- 150 7. Wind and solar energy projects; and
- 151 8. Transportation projects.

152 D. Provisional regulatory reprieve. The prohibition of subdivision C(1) shall not apply to any  
153 regulated activity that is actively under construction, has received all necessary permits and

154 approvals but for which construction has not commenced, or has evidenced contractual  
155 obligations as described in the appropriate sector-specific plan, as of the effective date of a  
156 sector-specific plan applicable to that regulated activity. Upon request, the department may  
157 provide assurance of non-prosecution to any person conducting such an active regulated  
158 activity for a period of up to two years from the effective date of the sector-specific plan for  
159 the specific regulated activity.

160 E. Applicability of other laws or regulations. Nothing in this section shall be interpreted to  
161 affect the provisions or requirements of any other federal, state, or local laws, regulations, or  
162 ordinances, including, but not limited to, the state Endangered Species Act, the federal  
163 Migratory Bird Treaty Act, the federal Bald and Golden Eagle Protection Act, and the federal  
164 Endangered Species Act.

165 F. Exemptions. The following activities are exempt from the permitting requirements found  
166 herein. Any incidental take associated with these activities will not be considered a violation  
167 of this section.

168 1. Activities that are not defined as “regulated activity.”

169 2. Agricultural and silvicultural activities.

170 3. Regulated activities that occur before a sector-specific plan has been adopted for a  
171 particular regulated activity.

172 4. Regulated activities performed under emergency situations, including, but not limited  
173 to, activities necessary to restore essential services, protect human health, address a  
174 public safety issue, and/or prevent imminent damage to property.

175 G. Permits. The following permits authorize incidental take resulting from regulated activities:

176 1. General permit.

177 a. The board may, by regulation, adopt a sector-specific plan for a category or  
178 categories of regulated activities that allows coverage under a general permit  
179 for incidental take of regulated bird species and/or habitats that occurs when a  
180 person is engaging in such activity and adheres to all provisions within the  
181 applicable sector-specific plan. The general permit authorizes an activity only  
182 if the activity and applicant satisfy all of the terms and conditions of the  
183 general permit and associated sector-specific plan. Every regulated activity  
184 shall obtain its own permit; however, where multiple projects fall under a  
185 single sector-specific plan, are similar in design, footprint, scope-of-work,  
186 scheduling, and occur in general avian habitats determined to not be  
187 biologically important to regulated bird species, the projects may be bundled  
188 under a single permit application and may make reference to the same  
189 information for multiple regulated activities so long as the cumulative impact  
190 of those activities will be no greater than would be the case if separate  
191 submissions were made for each activity.

192 b. In addition to the conditions set forth in this section pertaining to permit  
193 renewal, amendment, transfer, suspension, revocation, and other procedures

194 for permit issuance, a person applying for general permit coverage must  
195 adhere to the following procedures:

196 i. The applicant must submit a permit application and any required  
197 documents to the department in accordance with the specifications of  
198 the applicable sector-specific plan. The department may allow  
199 electronic submission of permit applications, required documents, and  
200 the applicable fee. Except as provided below, coverage under the  
201 general permit shall be effective upon the department's receipt and  
202 acknowledgement of a complete permit application, other required  
203 documents, and the applicable fee. In the permit application, the  
204 applicant may request a permit term shorter than prescribed for the  
205 appropriate sector-specific plan. The applicant shall not commence the  
206 proposed activity prior to the department's acknowledgement of  
207 receipt of a complete application.

208 ii. If a sector-specific plan expressly requires department review and  
209 authorization of general permit coverage, the applicant shall submit a  
210 permit application and any required documents, together with the  
211 applicable fee, to the department prior to commencing the proposed  
212 activity, and adhere to the following procedures unless the sector-  
213 specific plan otherwise specifies.

214 a) The department will review the permit application and required  
215 documents to ensure that the activity complies with the terms  
216 and conditions of the general permit.

217 b) If the department determines that the proposed activity is not  
218 compatible with the sector-specific plan, the department will  
219 notify the applicant of the incompatibility and instruct the  
220 applicant on necessary procedures for obtaining an individual  
221 incidental take permit or provide the applicant with the  
222 opportunity to revise the proposed activity to ensure its  
223 compatibility with the relevant sector-specific plan.

224 c. Mitigation. Incidental take by a regulated activity of regulated bird species  
225 and/or habitats shall be first avoided and then minimized through the use of  
226 best management practices described in the appropriate sector-specific plan.

227 d. Monitoring. Persons authorized by the general permit may be required to  
228 monitor impacts to and the incidental take of regulated bird species from the  
229 regulated activity as set forth in the sector-specific plan.

230 e. Term. No general permit coverage issued under this subsection shall be valid  
231 for a period of more than eight years after the date of its issuance, or such  
232 shorter term otherwise specified in the applicable sector-specific plan or  
233 requested by the applicant. An applicant may terminate a permit prior to the

234 defined term upon providing written evidence to the department of the  
235 conclusion of construction and fulfillment of any applicable monitoring  
236 requirements defined in the appropriate sector-specific plan.

237 2. Individual incidental take permit.

238 a. Applicants shall obtain individual incidental take permits, under such terms  
239 and conditions necessary to avoid, minimize and/or compensate for the  
240 incidental take of regulated bird species and/or habitats when one or more of  
241 the following circumstances apply:

242 i. Incidental take caused by regulated activities for which the board has  
243 promulgated a sector-specific plan that requires individual incidental  
244 take permits either for a category of regulated activities or specified  
245 regulated bird species and/or habitats;

246 ii. Incidental take caused by regulated activities that the department  
247 determines do not comply with the applicable sector-specific plan;

248 iii. Regulated activities that require compensation to offset unavoidable  
249 incidental take of regulated bird species and/or habitats;

250 iv. Regulated activities that will occur within or directly adjacent to  
251 biologically significant avian habitats; or

252 v. Regulated activities that will occur within or directly adjacent to  
253 general avian habitats considered biologically important to regulated  
254 bird species as determined by the applicant or the department.

255 b. In addition to the conditions set forth in this section governing permit renewal,  
256 amendment, transfer, suspension, revocation, and other procedures for permit  
257 issuance, an applicant for an individual incidental take permit must adhere to  
258 the following procedures:

259 i. An applicant for an individual incidental take permit shall prepare an  
260 avian conservation and mitigation plan in accordance with the  
261 provisions below, for department approval, and submit the applicable  
262 fee and any additional information and documents that the department  
263 determines is necessary for permit issuance. The applicant must apply  
264 for a permit prior to commencing the proposed activity.

265 ii. For permits issued in circumstances where the department notifies an  
266 applicant that an activity does not comply with the applicable sector-  
267 specific plan, applicants must apply for an individual incidental take  
268 permit prior to commencing the proposed activity, and, subject to the  
269 department's approval, prepare an avian conservation and mitigation  
270 plan, and submit the applicable fee and any other necessary  
271 information or documentation required by the department.

272 iii. The department shall review the applicant's permit application and  
273 included avian conservation and mitigation plan, and shall notify the

274 person applying for the permit, in writing, of any necessary  
275 amendments prior to permit issuance.

276 iv. Mitigation. Impacts of a regulated activity on regulated bird species  
277 and/or habitats shall be first avoided and then minimized through the  
278 use of best management practices described in the appropriate sector-  
279 specific plan and avian conservation and mitigation plan. Persons  
280 authorized by the individual incidental take permit will be required to  
281 compensate for unavoidable incidental take of regulated bird species  
282 and/or habitats.

283 v. Monitoring. In addition to the monitoring requirements included in an  
284 avian conservation and mitigation plan and permit, an individual  
285 incidental take permit shall specify that the applicant is responsible  
286 for:

287 a) Maintaining a record of all injury and mortality that occurs in  
288 association with the regulated activity. The record shall include  
289 a photographic record of injury and mortality using a standard  
290 protocol defined by the department.

291 b) Submission of reports of injury and mortality to the designated  
292 department representative on a quarterly basis starting from the  
293 date of issuance of the permit. The report shall be submitted  
294 on forms provided by the department. If no injury or mortality  
295 occurs, the report must so state. Reports of injuries or mortality  
296 will not result in the suspension of the permit if the person is in  
297 compliance with the conditions of the permit and all applicable  
298 laws or regulations governing the conduct of regulated  
299 activities.

300 c) Where determined necessary by the department, reporting  
301 injuries or mortalities by telephone to the designated  
302 department representative by the beginning of the next working  
303 day following their occurrence or observation.

304 vi. Term. No individual incidental take permit issued under this  
305 subsection shall be for a period of more than ten years after the date of  
306 its issuance, or such shorter time period determined appropriate by the  
307 department or requested by the applicant. An applicant may terminate  
308 a permit prior to the defined term upon providing written evidence to  
309 the department of the conclusion of construction and fulfillment of any  
310 applicable monitoring requirements defined in the individual  
311 incidental take permit.

- 312 3. An avian conservation and mitigation plan shall provide sufficient information to  
313 demonstrate that the conservation criteria established in the individual incidental take  
314 permit will be fulfilled. The plan must include:
- 315 a. A site plan drawn to scale showing the location of the proposed activity;
  - 316 b. A detailed description and schedule of the work to be performed;
  - 317 c. A quantitative or narrative description of the likely incidental take of  
318 regulated bird species and/or habitats;
  - 319 d. The steps the applicant will take to avoid, minimize, and/or compensate for  
320 such impacts, in accordance with the following:
    - 321 i. Avoidance, minimization and/or compensation measures shall employ  
322 reliable department-approved methods and shall be based upon the  
323 best available, practicable, and necessary science and technology to  
324 meet the requirements of the applicable sector-specific plan. These  
325 measures shall be evaluated for effectiveness in a consistent and  
326 rigorous manner by the applicant throughout their implementation.
    - 327 ii. Habitat type for regulated bird species shall be evaluated using  
328 methodologies and tools recommended by the department.
    - 329 iii. Compensation measures shall ensure that a self-sustaining ecosystem  
330 or quality of habitat comparable to the pre-activity conditions at the  
331 location of the regulated activity or within a reasonable proximity is  
332 established upon the activity's completion and achieves no net loss of  
333 regulated birds and habitats.
  - 334 e. Any alternative actions, including, but not limited to, siting, best practices,  
335 and mitigation, considered by the applicant and the reasons why such  
336 alternatives are not being utilized;
  - 337 f. A contingency plan to rectify any failures of implemented measures, or  
338 actions necessary to provide additional protection to regulated bird species,  
339 including hazing programs or other temporary or emergency measures that  
340 would be instituted; and
  - 341 g. Such other measures that the department or applicable sector-specific plan  
342 may require as being necessary or appropriate for purposes of the plan.
  - 343 h. The avian conservation and mitigation plan may avoid duplication by  
344 incorporating information included in environmental assessments or  
345 environmental impact statements prepared for the proposed activity, or  
346 information included in any permit application required by any other  
347 permitting agency. The plan shall identify by source, section and page number  
348 the information being relied upon.
- 349 4. While most general and individual incidental take permits will apply only to the  
350 construction phase of a regulated activity, nothing in this section shall prevent the  
351 board from including requirements for the operational phase of a particular regulated

352 activity in a sector-specific plan if the board determines that operations are known or  
353 likely to incidentally take regulated bird species and/or habitats, or an individual  
354 incidental take permit if the department determines that operations are known or  
355 likely to incidentally take regulated bird species and/or habitats. If operational  
356 requirements are included in a plan, permits may be renewed throughout the life of  
357 the regulated activity.

358 H. Permit procedures.

359 1. Administrative procedures.

360 a. The department shall determine the completeness of an application and shall  
361 notify the applicant of any determination within 45 calendar days of receipt.  
362 Where available to the applicant, electronic communication may be  
363 considered communication in writing.

364 i. If, within those 45 calendar days, the application is deemed to be  
365 incomplete, the applicant shall be notified in writing of the reasons the  
366 application is deemed incomplete.

367 ii. If a determination of completeness is made and the associated sector-  
368 specific plan does not require additional department review, the  
369 application is deemed approved under the terms of the associated  
370 sector-specific plan.

371 iii. If a determination of completeness is made and the associated sector-  
372 specific plan requires additional department review, an extra 90  
373 calendar days from the date of the determination of completeness will  
374 be allowed for review of the application documents, except for  
375 individual incidental take permit applications, for which an additional  
376 120 calendar days are allowed for review. If, at the end of the  
377 designated review period, the department has not taken final action on  
378 the application or identified the need for an additional 60 days for  
379 review, the application shall be deemed approved.

380 iv. If a determination of completeness is not made and communicated to  
381 the applicant within the 45 calendar days, the application shall be  
382 deemed complete as of the date of submission and a total of 120  
383 calendar days from the date of submission will be allowed for the  
384 review of the application.

385 v. The department shall review, within 60 calendar days of the date of  
386 resubmission, any application that has been previously deemed  
387 incomplete.

388 b. During the review period, the application shall be approved or disapproved  
389 and the decision communicated in writing to the applicant. If the application is  
390 not approved, the reasons for not approving the application shall be provided  
391 in writing. Approval or denial shall be based on the application's compliance

392 with the requirements of this chapter and of applicable sector-specific plans.  
393 When available to the applicant, electronic communication may be considered  
394 communication in writing.

395 c.If the application is not approved, the applicant shall have 45 calendar days to  
396 revise the permit application to bring it into compliance with the appropriate  
397 sector-specific plan or meet the department’s expectations of the individual  
398 incidental take permit or avian conservation and mitigation plan or to appeal  
399 the decision to the director of the department under the department’s [dispute](#)  
400 [resolution and administrative appeals procedure](#). The applicant may request,  
401 in writing, an extension of the timeframe in which to submit a revised  
402 application, not to exceed an additional 60 calendar days. If the revised  
403 application is not submitted within the defined timeframe, the department will  
404 administratively close the application.

405 d.At the conclusion of the review of an individual incidental take permit, the  
406 department will provide the applicant with draft permit terms and conditions  
407 in writing. The applicant shall have 30 calendar days from receipt to provide  
408 comments, revise the application, and/or appeal the draft terms and  
409 conditions.

410 2. Required general information. An individual incidental take permit application or  
411 permit application for coverage under a general permit must contain the following  
412 information:

413 a.Applicant’s full name and address, telephone number, and, if available, fax  
414 number and email address; and

415 i. If the applicant resides or is located outside of the Commonwealth of  
416 Virginia, the name and address of an agent located in the  
417 Commonwealth of Virginia; and/or

418 ii. If the applicant is an entity, a description of the type of entity, and the  
419 name and title of an individual who will be responsible for the permit;

420 b.Location of the regulated activity;

421 c.Certification in the following language: “I hereby certify that the information  
422 submitted in this application is complete and accurate to the best of my  
423 knowledge and belief;”

424 d.Desired effective date of permit except where issuance date is fixed by the  
425 sector-specific plan under which the permit is issued;

426 e.Desired duration of permit, if less than the default term for the sector-specific  
427 plan under which the general or individual incidental take permit is requested;

428 f. Date of application;

429 g.Signature or electronic signature or certification of the applicant; and

430 h.Such other information or documentation as may be required by this section of  
431 the applicable sector-specific plan.

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3. Permit issuance.

- a. The department shall not issue a permit if:
  - i. The applicant has one or more of the disqualifying factors included in (b) below; or
  - ii. The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with the application; or
  - iii. The department determines that the application fails to comply with the applicable sector-specific plan, other applicable wildlife law, regulation, or ordinance, or criteria deemed necessary to an individual incidental take permit.
- b. Disqualifying factors. The department will provide written notice of disqualifying factors to the applicant or permittee. Any one of the following will disqualify an applicant from receiving or exercising a permit:
  - i. A conviction, or entry of a plea of guilty or nolo contendere, for a violation of the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, the federal Endangered Species Act, the state Endangered Species Act, or this section within the five-year period preceding the application by the applicant or a representative of the applicant, unless such disqualification has been expressly waived by the department in response to a request by the applicant.
  - ii. The failure to pay any required fees.
  - iii. The failure to submit timely, accurate, and complete reports as required disqualifies such person from receiving or exercising the privileges of a permit as long as the deficiency exists. Upon receipt of written notice, the permittee shall have 30 calendar days to cure the deficiency.
- c. Fees. An application fee of \$50 and a permit fee of \$50 per year shall be due for each permit. The full amount of the permit fee shall be based on the default duration of the permit and is due at the time of certification, if no approval is required, or the department's approval and/or issuance of a permit. The fees will be deposited into the Nongame Cash Fund and used for the conservation and management of regulated bird species, consistent with §58.1-344.3 of the Code of Virginia. No refund of any fees paid for issuance of the permit shall be made when a permit is terminated prior to the expiration date.
- d. Permit renewal. Applications for renewal shall meet and comply with all requirements for permit application, and be submitted at least 90 calendar days prior to the expiration of an existing permit.

471 e.Modifications to permits. Permits may be modified, with the department's  
472 approval, in accordance with the following:

473 i. Applicant's request. Where circumstances have changed so that an  
474 applicant desires to have any condition of the permit modified, the  
475 applicant must submit a full written justification and supporting  
476 information to the department in conformity with the terms and  
477 conditions under which the permit was issued.

478 ii. Department determination. The department may amend any permit  
479 during its term where circumstances have changed such that  
480 amendments to the permit are deemed necessary by the department. In  
481 such instances, the department will notify the applicant in writing 60  
482 calendar days in advance of the effective date of any amendment. The  
483 applicant shall have 30 calendar days to appeal the decision to the  
484 department director under the department's [dispute resolution and](#)  
485 [administrative appeals procedures](#).

486 f. Transfer of permits and scope of permit authorization.

487 i. Except as otherwise provided for in this subsection, permits issued  
488 under this part are not transferable or assignable.

489 ii. Permits issued under this part may be transferred in whole or in part  
490 through a joint submission by the applicant and the proposed  
491 transferee, or in the case of a deceased applicant, the deceased  
492 applicant's legal representative and the proposed transferee, provided  
493 the department determines that:

494 a) The proposed transferee meets all of the qualifications under  
495 this part for holding a permit;

496 b) The proposed transferee has provided adequate written  
497 assurances that it will implement the relevant terms and  
498 conditions of the permit; and

499 c) The proposed transferee has provided other information that  
500 the department determines is relevant to the processing of the  
501 submission.

502 iii. Except as otherwise stated on the face of the permit, any person who is  
503 under the direct control of the applicant, or who is employed by or  
504 under contract to the applicant for purposes authorized by the permit,  
505 may carry out the activity authorized by the permit.

506 g.Discontinuance of permit activity. When an applicant discontinues activities  
507 authorized by a permit, the applicant shall, within 30 calendar days of the  
508 discontinuance, notify the department of permit termination.

509 h.Permit inspections. The department shall have the right to perform inspections  
510 of a permitted activity to ensure compliance with permit conditions. Written

511 (including electronic) or verbal notice of such inspection shall be given on a  
512 business day, and the inspection shall not occur until the passage of 24 hours  
513 from the time of notice, except when the department determines that an  
514 emergency inspection is necessary.

515 i. Permit suspension and revocation.

516 i. Criteria for suspension. The privileges of exercising some or all of the  
517 permit authority may be suspended at any time if the applicant is not in  
518 compliance with the conditions of the permit, or with any applicable  
519 laws or regulations governing the conduct of the regulated activity.  
520 Such suspension shall remain in effect until the department determines  
521 that the applicant has corrected the deficiencies.

522 ii. Criteria for revocation. A permit may be revoked for any of the  
523 following reasons:

524 a) The applicant willfully violates any federal, state, or local law,  
525 regulation, or ordinance, which involves a violation of the  
526 conditions of the permit or other federal or state wildlife laws;  
527 or  
528 b) The applicant fails within 60 calendar days to correct  
529 deficiencies that were the cause of a permit suspension.

530 iii. Procedure for suspension and revocation.

531 a) The applicant shall be notified in writing of the suspension or  
532 revocation by certified or registered mail. This notice shall  
533 identify the permit to be suspended, the reason(s) for such  
534 suspension, the actions necessary to correct the deficiencies,  
535 and inform the applicant of the right to appeal the suspension.  
536 The department may amend any notice of suspension at any  
537 time.

538 b) The applicant shall be provided with an opportunity to appeal  
539 the suspension or revocation within 30 calendar days of  
540 mailing of the suspension or revocation by filing a written  
541 objection specifying the reasons by the applicant objects to the  
542 suspension of revocation, and may include supporting  
543 documentation.

544 c) If, at the end of 30 calendar days, no appeal has been received  
545 by the department, a final order shall be issued suspending or  
546 revoking the permit.

547 d) If, prior to 30 calendar days from the date of mailing, the  
548 person submits an appeal, an informal fact-finding proceeding  
549 will be held within 30 calendar days, or, at the option of the

550 department, a formal hearing may be scheduled as soon as may  
551 be practicable.

552 e) Following an informal fact-finding proceeding or formal  
553 hearing, a final decision shall be made by the department  
554 within 30 calendar days of the informal fact-finding proceeding  
555 or receipt of a determination by any hearing officer.

556 I. Biennial standards and specifications. Any person who will undertake multiple regulated  
557 activities requiring a permit may biennially submit a single set of standards and  
558 specifications for department approval that describes how covered regulated activities shall  
559 be conducted.

560 1. Such standards and specifications shall be consistent with the requirements of this  
561 section and the applicable sector-specific plans. The cumulative impact of regulated  
562 activities conducted under standards and specifications shall not exceed that which  
563 would be anticipated to occur if each activity were otherwise permitted under this  
564 section. Each project constructed for which a permit is required shall obtain such  
565 permit by filing a permit application referencing the approved standards and  
566 specifications and paying the fee applicable under subdivision G(3)(c) prior to the  
567 commencement of the regulated activity. The standards and specifications shall  
568 include:

569 a. A reference to which sector-specific plans are addressed by the standards and  
570 specifications;

571 b. A description of the regulated activities that the applicant intends to be  
572 addressed by the standards and specifications, and, if applicable, any other  
573 regulated activities that the applicant intends to conduct that will not utilize  
574 the standards and specifications;

575 c. Information satisfactory to the department demonstrating how regulated  
576 activities conducted under the standards and specifications will meet the  
577 requirements of the applicable sector-specific plans, together with a copy of  
578 any reference materials cited by the standards and specifications; and

579 d. Implementation of a regulated activity tracking system of all regulated  
580 activities conducted under the standards and specification, together with a  
581 permittee self-monitoring program that will ensure compliance with the  
582 standards and specifications.

583 2. Such standards and specification may be utilized following department approval.  
584 Utilization of approved standards and specification shall not affect the department's  
585 authority to perform inspections of regulated activities addressed by the standards and  
586 specifications. Noncompliance with approved standards and specifications shall have  
587 the effect of noncompliance with the requirements of the applicable sector-specific  
588 plan for the regulated activity for purposes of permit modification, suspension or  
589 revocation under this section.

590 J. Enforcement; unpermitted regulated activities. Administrative permit actions, including  
591 modification, suspension, and revocation, shall be addressed according to the department's  
592 [dispute resolution and administrative appeals procedures](#). Any person conducting a regulated  
593 activity for which a permit is required by the section without such permit, including where a  
594 regulated activity has commenced without a permit or continued after permit suspension or  
595 revocation, shall be guilty of a Class 3 misdemeanor as specified by §29.1-505 of the Code of  
596 Virginia.