



FWS Proposes to Streamline Eagle Take Permitting Process

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On September 30, 2022, the U.S. Fish and Wildlife Service (FWS) issued a proposed rule that would revise the eagle take permit program under the Bald and Golden Eagle Protection Act to make key changes in permitting and monitoring requirements. [87 Fed. Reg. 59,598](#).

Notably, while FWS will continue to issue specific permits for eagle incidental take and eagle nest take, the proposed rule would create a general permit option for certain wind-energy generation projects, power line infrastructure, and other qualifying activities. FWS is also proposing to remove the requirement for third-party monitoring for eagle incidental take permits and to update permitting fees. Through these revisions, FWS intends “to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles.”

Comments on the proposed rule are due [November 29, 2022](#).

Background

The Bald and Golden Eagle Protection Act criminalizes the “taking” of bald or golden eagles (including their parts), nests, or eggs. Under the Act, “take” is defined as actions that “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb” eagles and their nests or eggs. The Act also makes it unlawful to “disturb” a bald or golden eagle; that is, to agitate to a degree that causes, or is likely to cause, injury to an eagle. To “disturb” also includes substantial interference with breeding, feeding, or sheltering behavior, resulting in decreased productivity and nest abandonment. Anyone found in violation of the Act may face criminal penalties.

Currently, FWS issues specific permits for eagle incidental take and eagle nest take. With the proposed rule authorizing general permits, FWS hopes to streamline the permitting process for certain categories of activities.

Creation of General Permits for Qualifying Activities

FWS is proposing to allow for a general permit alternative for incidental take at wind-energy generation facilities and power line structures, disturbance take of bald eagles, and bald eagle nest take. Currently, eagle take is permitted through FWS’s issuance of specific permits, which include permit conditions specific to the project. While FWS would retain this system for activities with “high or uncertain risks to eagles,” the agency is proposing general permits for the activities listed above because it states that the frequency of the take for these activities has allowed FWS to develop a standard approach to permitting those activities. By allowing applicants to self-certify that they meet the eligibility criteria and by eliminating the need for FWS review before obtaining the permit, FWS aims to streamline the permitting process.

General permits for incidental take will be limited to a maximum of five years, and a maximum of one year for disturbance take or nest removal. In addition, there must have been fewer than four mortalities of each eagle species detected at the project location within the five-year permit tenure. A small fraction of general permits will also be audited annually to ensure appropriate use of the permitting program.

Requirements for the types of activities potentially eligible for general permits vary:

- *Wind Energy General Permits.* There are two eligibility criteria evaluated for wind energy general permits: eagle abundance and distance to nests. First, a project may be eligible for a general permit if eagle abundance (for both bald eagles and golden eagles) at the turbine locations is lower than the specified thresholds for various date ranges. Second, the distance of the turbine locations from the nests must be greater than 660 feet from bald eagle nests and more than two

miles from golden eagle nests. General permits for wind energy projects do not specify the allowed number of take on the face of the permit.

- *Power Line General Permits.* There are six eligibility conditions for a power-line project to qualify for a general permit for incidental take. First, the permit holder must ensure that “all new construction and reconstruction of pole infrastructure must be electrocution-safe” for both eagle species, with an exception for human health and safety. Second, all new construction and reconstruction of power transmission lines must account for nesting, foraging, and roosting areas. FWS recommends siting infrastructure at least 660 feet from a bald eagle nest or roost, at least two miles from a golden eagle nest, and at least one mile from foraging areas of both species. Third, when eagle electrocution is discovered, the project must develop a reactive retrofit strategy, which must include how electrocutions are detected and identified. Fourth, the project must develop a proactive retrofit strategy to make power line infrastructure electrocution-safe. Fifth, the project must develop an eagle collision response strategy. Sixth, when an eagle shooting is discovered, the project must develop and implement an eagle-shooting response strategy. FWS is also proposing a monitoring requirement that would require power-line entities to train employees to recognize and report eagle take.
- *Disturbance Take of Bald Eagles.* The proposed rule would authorize general permits for disturbance of bald eagles for activities falling within Categories A-H in the 2007 Activity-Specific Guidelines of the National Bald Eagle Management Guidelines, which include construction activities and linear utilities. Under the proposed rule, permit holders would be required to implement “measures to avoid and minimize to the extent practicable” risk from activities that disturb breeding bald eagles. Activities such as hazing, or those activities conducted “adjacent to communal roost or foraging areas,” do not constitute a disturbance. Notably, specific permits would still be required for the disturbance take of golden eagles.
- *Permits for Take of Bald Eagle Nests.* FWS proposes to allow general permits authorizing bald eagle nest take for “emergency, health and safety and human-engineered structures.” General permits would also allow removal of subsequent nesting attempts on the same nesting substrate, up to a half-mile radius of that location, if the subsequent nesting attempts pose emergency, health and safety, and functional hazards. Notably, specific permits would still be required for the disturbance take of golden eagles.

Monitoring Requirements

FWS proposes to remove the current third-party monitoring requirement from incidental take permits. Permit holders would instead be required to certify that the information they submit is complete and accurate, or be subject to criminal penalty under 18 U.S.C. §1001.

In cases of incidental take by wind energy and power-line projects, the permit holder would be required to train employees to detect, record and report eagle take. For disturbance permits, the permit holder would have to monitor in-use nests to determine “whether nestlings have fledged from the nest and submit this information on its annual report.”

FWS proposes to conduct program-scale monitoring (instead of project-scale monitoring) using the permit and administration fees for general incidental take to evaluate the impact of the general permitting program.

Fees

The proposed fees associated with the different categories of eligibility for general permits vary. Incidental take general permits for wind-energy generation projects would cost \$500 for the application, and \$2,625 per turbine for the permit and administration. For power lines, the proposed application fee for incidental take general permit is \$500, plus a permit-administration fee of \$5,000 toward each state issuing the authorization. Bald eagle disturbance and nest-take general permits would not require an administration fee.

For More Information

Van Ness Feldman counsels clients on the eagle take permit program under the Bald and Golden Eagle Protection Act. If you would like more information about this proposed rule, please contact [Joe Nelson](#) or [Tyson Kade](#).

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