



## FREQUENTLY ASKED QUESTIONS ABOUT A FEDERAL SPECIAL PURPOSE UTILITY PERMIT

A Special Purpose Utility permit authorizes utilities to collect, transport and temporarily possess migratory birds found dead on utility property, structures, and rights-of-way for avian mortality monitoring or disposal purposes. Permits can also authorize active nest relocation or destruction in emergency circumstances. A utility includes, but is not limited to, a business that owns or operates a facility that generates or transmits electricity, gas, oil, water, or communications structures such as cellular towers, microwave transmitters and their related infrastructure, as well as resource development and recovery businesses.

You should review Title 50 parts 10, 13 and 21.27 of the Code of Federal Regulations (CFR) with your application. **You are responsible for reviewing and understanding these regulations before you request and accept a permit.** These regulations are on our website at: <https://www.fws.gov/birds/policies-and-regulations/permits/permit-policies-and-regulations.php>.

### **1. What does a Special Purpose Utility Permit authorize?**

A Special Purpose Utility permit authorizes utilities to collect, transport and temporarily possess migratory birds found dead on utility property, structures, and rights-of-way for avian mortality monitoring or disposal purposes. Authorization can include emergency relocation or destruction of an active nest. This permit can also authorize a utility to remove bird remains from an area and/or retain specimens for identification.

### **2. Are utilities required to obtain a Special Purpose Utility Permit?**

No. A Special Purpose Utility Permit is not required. However, the Service encourages utilities to obtain this permit. It enhances a utility's ability to accurately monitor migratory bird mortalities. Collecting and reporting the associated data to the U.S. Fish and Wildlife Service (Service) contributes to our collective knowledge and understanding of the impacts of the utility on migratory birds.

### **3. Can a consultant obtain a Special Purpose Utility permit?**

No. This permit will be issued only to utility companies. A consultant may act on behalf of a company to develop the monitoring plan, permit application materials, and reports, as well as and conduct the fieldwork. However, the Principal Officer of the utility company must sign the application and is responsible for the activities that occur.

### **4. Can utilities move migratory bird nests that are at risk or pose a human safety risk?**

Yes. Permits issued to utilities authorize the relocation or removal of active migratory bird nests on structures if they are causing a safety risk, such as a fire or power outage, or operator safety. Inactive nests may be removed without a permit (See Nest Destruction Memo at <https://www.fws.gov/migratorybirds/pdf/policies-and-regulations/MBPM-2nest.pdf>). **To conduct activities involving nests of Eagles or federally listed Threatened or Endangered Species, you must obtain additional appropriate permit(s).**

### **5. Must utilities have an avian protection plan or migratory bird conservation plan to qualify for a Special Purpose Utility Permit?**

No. Although the Service encourages utilities to prepare an avian protection plan or other conservation plan in cooperation with the Service to guide siting, construction, and operation of energy facilities, a plan is not required for a Special Purpose Utility Permit.

**6. Where can a utility obtain information about developing a post-construction mortality monitoring plan?**

The Service's Land-Based Wind Energy Guidelines and the Eagle Conservation Plan Guidance each provide information about designing a scientifically rigorous avian mortality monitoring plan. Although both of these documents are directed at wind energy facilities, the fatality monitoring methods and metrics may aid other types of utilities in siting and operations. These documents are available at <https://www.fws.gov/birds/management/project-assessment-tools-and-guidance/guidance-documents/wind-energy.php>

**7. Can a utility use migratory bird carcasses for searcher efficiency and scavenger removal trials?**

Yes. Your permit may authorize migratory bird carcasses to be used for searcher efficiency and scavenger removal trials. Eagles and species federally listed as Threatened or Endangered may not be used.

**8. What type of research can I conduct under a Special Purpose Utility permit?**

Research related to operation of the utility can be authorized by a Special Purpose Utility permit. This includes such research as searcher efficiency trials, carcass remove trials, operational changes, etc. The Service will consider on a case-by-case basis applications for Scientific Collecting Permits for independent research that transcends the operations of an individual utility.

**9. Can multiple utility projects obtain a single Special Purpose Utility permit to cover all of their projects?**

Yes. The Service can issue a single permit to a utility with multiple projects. This includes projects of the same type (i.e. multiple wind projects) and projects of different types (i.e. transmission, wind, and solar). The utility should apply to the Service Region where the majority of the activity is occurring.

**10. If the company or operation is sold, can the permit be transferred to the new owner?**

No. Permits are not transferrable (50 CFR 13.25). The new owner must submit an application for a new permit referencing the previous permit number, and the previous owner must request discontinuance of the activities associated with the sold operation.

**11. Who are the personnel identified on my permit and what are they authorized to do, i.e. principal officer, primary contact and subpermittee?**

- (a) **Principal Officer.** For permits issued to organizations, a Principal Officer is identified on the permit. The Principal Officer is the person in charge of the organization and is legally responsible for the application, any permitted activities, and the annual reporting requirements.
- (b) **Primary Contact.** The Primary Contact is the person in the organization who is available to answer questions about the application or permitted activities. They often organize and complete documents for the Principal Officer's signature and maintain records. This person may be the same or different than the Principal Officer. The Primary Contact is not authorized to conduct permitted activities unless the individual is also listed as a subpermittee.
- (c) **Subpermittee.** A subpermittee is an individual authorized to conduct some or all of the permitted activities without the permittee present. You must identify any subpermittees in your application. Your subpermittees must have either a copy of your permit that identifies them as a subpermittee, or a copy of your permit and a letter from the Permittee (Principal Officer) specifying activities (including location and duration) they are authorized to conduct. As the permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers are properly trained and adhere to the terms of your permit. If subpermittees maintain birds or records off-site, their physical location must be listed on your permit. Subpermittees must be at least 18 years of age. Individuals younger than 18 and staff/volunteers not identified as subpermittees must have a permittee or subpermittee present when conducting activities.

**12. Are other permits needed to conduct permitted activities?**

A Federal Special Purpose Utility permit is not valid unless the permittee also complies with other applicable Federal, State, Tribal, or local requirements. This means that if a State requires you to have a permit to collect dead migratory birds, you must have one in order for the Federal permit to be valid. It is the permittee's responsibility to ensure compliance with any other permit requirements.

**13. Does this permit authorize the Service to inspect utility property?**

Yes. Acceptance of a permit authorizes the Director's agent to enter the permittee's premises at any reasonable hour to inspect the wildlife, records, and property, and for compliance with the terms of the permit.

**14. Will a company be required to keep records of its activities?**

Yes. Every Special Purpose Utility permit holder must maintain accurate records, legible written or reproducible in English, of the permitted activities on a calendar-year basis. Your permit will specify the records you must keep which may include all of the data associated with each formal carcass search any incidental find and each carcass or part collected. These records must be kept for at least 5 years after the expiration of the permit.

**15. Are there reporting requirement for Special Purpose Utility Permits?**

Yes. Permit holders are required to report all birds collected on utility property and all active nests relocated or destroyed.

**16. Will the Service protect the application and report information submitted by the permittee?**

The Freedom of Information Act (FOIA) provides the public with access to agency records unless the records are protected from disclosure by a specific exemption. Exemption 4 protects trade secrets and commercial or financial information that is privileged or confidential. When Service has reason to believe that information that is responsive to a FOIA request may be protected from disclosure under Exemption 4, we will follow the Department of the Interior's (DOI) FOIA regulations for handling confidential information, and, if required, inform the applicant/permittee of the request and provide an opportunity to object to release. The DOI FOIA regulations for handling confidential information are located at: [43CFR2.26 – 2.36 \(http://www.ecfr.gov/cgi-bin/text-idx?SID=1ae96f673cc70e043eee67771516067e&node=43:1.1.1.2&rgn=div5\)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1ae96f673cc70e043eee67771516067e&node=43:1.1.1.2&rgn=div5). Nevertheless, when a company submits an application or report, it should clearly identify any information in its application or report that should be considered confidential business information.

**17. What is the process for permit renewal?**

If you wish to renew your permit, you must submit a renewal application to your Regional Migratory Bird Permit Office at least 30 days prior to the expiration of your permit and include a copy of your current State permit, if one is required. If we receive your renewal request at least 30 days prior to the expiration of your permit, your permit will remain valid beyond the expiration date for the activity authorized on your permit until the Service acts upon your renewal application. If we receive your renewal request fewer than 30 days prior to expiration of your permit and we are not able to process your request before the expiration date, your permit will expire and you will no longer be authorized to conduct your activity. If you allow your permit to expire before requesting renewal, you may be required to submit a new application. (See 50 CFR 13.11(c) and 13.22))

**18. What information is required in the renewal application?**

In addition to any updates in monitoring protocols, a renewal application must include information on any adjustments or measures that were taken by the permittee to avoid or minimize mortalities as a result of the monitoring, and if so, any preliminary results of those modifications. Additional information may be required based on the type of utility.