

General Permit Conditions – Bald Eagle Disturbance

Definitions (as defined in 50 CFR 22.6 and available at <https://www.ecfr.gov/current/title-50/section-22.6>):

Alternate Nest means one of potentially several nests within a nesting territory that is not an in-use nest at the current time. When there is no in-use nest, all nests in the territory are alternate nests.

Disturb means 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.

Eagle nest means any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. An eagle nest remains an eagle nest until it becomes so diminished, or the nest substrate upon which it is built fails, that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, Tribal, or State eagle biologist.

In-use nest means a bald eagle or golden eagle nest that contains one or more viable eggs or dependent young, or, for golden eagles only, has had adult eagles on the nest within the past 10 days during the breeding season.

Incidental take means take that is foreseeable and results from, but is not the purpose of, an activity.

Nesting territory means the area that contains one or more eagle nests within the home range of a mated pair of eagles, regardless of whether such nests were built by the current resident pair.

Practicable means available and capable of being done after taking into consideration existing technology, logistics, and cost in light of a mitigation measure's beneficial value to eagles and the activity's overall purpose, scope, and scale.

Definitions for the purposes of these permit conditions:

Breeding season refers to the period of time where eagles are breeding, or are preparing to breed. Actual breeding season dates can vary slightly between breeding pairs and from year to year. For bald eagles, the Service uses the date ranges listed by state in Table 1 (located at the end of this permit).

Occupied nest means an in-use bald eagle nest or an alternate bald eagle nest that has had attending adults within the past 10 days during the first 3 months of the breeding season.

A. Authorization.

You are authorized to disturb bald eagles at the nest location listed above under "Location where authorized activity may be conducted."

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(1) Disturbance is authorized provided there is no practicable alternative to avoiding or minimizing it. The authorization applies only to disturbance take resulting from activities and infrastructure described in your general permit application and conducted in accordance with the terms of this permit.

(2) Disturbance is authorized for activities associated with building construction and maintenance, linear infrastructure construction and maintenance, alteration of shorelines and water bodies, alteration of vegetation (including timber management), prescribed burn operations, motorized recreational activities, nonmotorized recreational activities, aircraft operation, and loud intermittent noises (including blasting). You must remain in compliance only with the permit conditions in C(1) and the conditions associated with your activity type(s) you are conducting.

B. Prohibited. This permit does not authorize:

(1) Take of eagle nests, including by substantively modifying nesting substrate sufficient to render the substrate unsuitable for eagle nesting, except as authorized in C(8) for prescribed burn operations.

(2) Disturbance of golden eagles.

(3) Incidental or intentional take that results in injury or death of eagles.

(4) Possession of eagles, nestlings, or eggs.

(5) Permanent take of any eagle territory. Your activities must not eliminate the potential for future nesting activity within any eagle territory.

C. Avoidance and Minimization. You must implement the avoidance and minimization measures set forth below for the activity type(s) you are conducting under this permit. Breeding season dates are listed in Table 1 below.

(1) All Activities:

(a) You must review the Service's National Bald Eagle Management Guidelines (BEMG) (available at https://www.fws.gov/sites/default/files/documents/national-bald-eagle-management-guidelines_0.pdf) and conduct your activity consistent with these guidelines. You must document in writing any applicable BEMG recommendations you do not implement with a justification as to why the measure is not practicable.

(b) In many areas bald eagles have demonstrated tolerance to human activity. If bald eagles have demonstrated tolerance to your activity or similar activities within the same distance to the nest, you may opt to not implement all of the conditions in Condition C. You must document in writing any applicable conditions you do not implement with a justification as to how you determined the condition is not warranted.

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(c) You must avoid activities that may affect the survivability of the nest tree or other natural nesting substrate. The nest location must be identified on plans and communicated to contractors or other third parties doing work at your site. You must preserve the root integrity of the nest tree by avoiding heavy equipment operation, soil compaction, or ground disturbance greater than 12 inches deep within the nest tree's dripline or 50 feet, whichever is greater.

(d) To the maximum degree practicable, avoid conducting activities that may disturb eagles during severe weather such as heavy rain, severe thunderstorms, high winds, or extreme temperatures (high or low) to ensure adult eagles can provide necessary warmth and shelter for eggs and nestlings while they are vulnerable to such weather events.

(2) Construction of Buildings and Infrastructure.

Exterior construction includes exterior building construction as well as related activities. No measures are required for unoccupied nests. For nests that are occupied or status is unknown, you must, to the extent practicable:

(a) Initiate exterior construction and related activities within 330 feet of the nest outside the breeding season.

(b) Initiate exterior construction within 660 feet of the nest as late in the breeding season as possible to avoid the time of year when eagles are most susceptible to disturbance. To the extent practicable, avoid conducting exterior construction within 660 feet of the nest during the first three months of the breeding season.

(c) Initiate exterior construction at the furthest possible distance from the nest to allow the eagles the opportunity to adjust to your activities. Work toward the nest such that any activity to be conducted nearest to the nest occurs last.

(d) Avoid exterior construction within 660 feet of the nest before and for two hours after sunrise and also for two hours before and after sunset to allow eagles time each day to care for nestlings.

(e) Minimize noise and visibility of exterior construction for activities that will occur within 660 feet of the nest. For example, create barriers using available natural and artificial barriers such as screening vegetation, topography, or vertical structures.

(f) Minimize infrastructure or other project component inspection activities within 330 feet of the nest.

(g) For inspections within 330 feet of the nest,

(i) Inform all individuals of the nest's location, including scheduled and unscheduled inspectors;

(ii) Conduct all inspection activities from closed cab vehicles whenever practicable;

(iii) Inform inspectors to limit their time within 330 feet of the nest, including limiting unnecessary noise and visual disturbance; and

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(iv) Avoid approaching the nest directly on foot.

(3) Maintenance of Buildings and Infrastructure.

Conditions (a)-(b) are required for all nests, regardless of status. For nests that are occupied or status is unknown, conditions (c)-(i) are also required, unless eagles have demonstrated tolerance to maintenance activities. To the maximum extent practicable, conduct vegetation alteration outside of the breeding season. You must also, to the extent practicable:

(a) Follow state and federal guidelines, laws, and labels and instructions at all times if using pesticides, herbicides, or other chemicals during facility maintenance. To the maximum degree practicable, avoid the use of anticoagulant rodenticides. Anticoagulant rodenticides are a leading cause of eagle death. This permit does not authorize the killing or injury of eagles resulting from chemical or pesticide exposure.

(b) Avoid material and equipment storage within 330 feet of the nest. Do not store or stage materials and equipment within the dripline of the nest tree, or 50 feet, whichever is greater.

(c) Minimize material and equipment storage and staging within 660 feet of the nest tree. If you must use areas within 600 feet of the nest for staging during the breeding season, reduce the visibility of material or equipment by creating natural or artificial barriers using screening vegetation, topography, or vertical structures.

(d) If maintenance, restoration, and landscaping activities are visible from the nest, avoid these activities within 660 feet of the nest before and for two hours after sunrise and for two hours before and after sunset.

(e) When conducting maintenance, restoration, and landscaping activities within 660 feet of the nest, begin as late in the breeding season as possible. To the maximum degree practicable, avoid conducting such activities within 660 feet of the nest during the first three months of the breeding season.

(f) Initiate and conduct maintenance, restoration, and landscaping activities at the furthest possible distance from the nest and work toward the nest such that any activity to be conducted nearest the nest occurs last.

(g) Minimize the use of open cab equipment when conducting activities within 330 feet of an eagle nest.

(h) Avoid the use of heavy equipment or loud machinery within 330 feet of an eagle nest.

(i) Avoid the use of netting adjacent to any water features to reduce risk of eagle entanglement.

(4) Alteration of shorelines and water bodies.

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Conditions (a)-(d) are required for all nests, regardless of status. For nests that are occupied or status is unknown, conditions (e)-(f) are also required. To the maximum extent practicable, conduct alteration outside of the breeding season.

(a) Avoid draining or drawing down any existing waterbodies within 660 feet of an eagle nest at a rate faster than normal water usage or evaporation.

(b) When altering shoreline or waterbody boundaries or conducting any associated geotechnical work within 660 feet of an eagle nest, you must:

(i) Avoid work within 660 feet of the nest before and for two hours after sunrise also for two hours before and after sunset.

(ii) Initiate work within 660 feet of the nest as late in the breeding season as possible. Avoid conducting work within 660 feet of the nest during the first three months of the breeding season.

(iii) Initiate work and related activities within 330 feet of the nest outside the breeding season.

(iv) Initiate work at the furthest possible distance from the nest. Work toward the nest such that any activity to be conducted nearest to the nest occurs last.

(v) Minimize noise and visibility of exterior construction for activities that will occur within 660 feet of the nest. For example, create barriers using available natural and artificial barriers such as screening vegetation, topography, or vertical structures.

(c) Remove dams and other infrastructure for controlling water outside of the breeding season.

(d) To the maximum degree practicable, construct new dams and infrastructure for controlling water outside of the breeding season. If construction must occur during the breeding season, you must:

(i) Avoid construction within 660 feet of the nest before and for two hours after sunrise and also for two hours before and after sunset.

(ii) Initiate construction within 660 feet of the nest as late in the breeding season as possible. To the extent practicable, avoid conducting construction within 660 feet of the nest during the first three months of the breeding season.

(iii) Initiate construction and related activities within 330 feet of the nest outside the breeding season.

(iv) Initiate construction at the furthest possible distance from the nest. Work toward the nest such that any activity to be conducted nearest to the nest occurs last.

(v) Minimize noise and visibility of construction for activities that will occur within 660 feet of the nest. For example, create barriers using available natural and artificial barriers such as screening vegetation, topography, or vertical structures.

(e) Design and construct new, or modifications to existing, water bodies in a manner that protects the nest tree, including all practicable measures to protect soil and prevent erosion that would destabilize the tree.

(5) Alteration of Vegetation.

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Conditions (a)-(e) are required for all nests, regardless of status. For nests that are occupied or status is unknown, condition (f) is also required. To the maximum extent practicable, conduct vegetation alteration outside of the breeding season. You must also, to the extent practicable:

- (a) Minimize the amount of tree or significant vegetation removal within 660 feet of the nest.
- (b) Avoid clearcutting trees within 330 feet of the nest tree at any time.
- (c) Retain the maximum number of mature trees practicable within 660 feet of the nest. Prioritize retaining mature trees within 330 feet of the nest, trees adjacent to foraging areas, and trees with documented use as perch or roost trees.
- (d) Take every practical precaution, such as using a professional tree service, to fell trees near the nest tree in such a way that they do not contact the nest tree, especially the crown of the nest tree.
- (e) Remove vegetation for chipping, burning, or other disposal methods that may cause disturbance at least 660 feet from the nest.
- (f) If conducting timber operations or forestry, avoid new construction of log transfer facilities, in-water log storage areas, new road construction, and chain saw or yarding operations within 330 feet of the nest.
- (g) For any vegetation removal that must occur during the breeding season within 660 feet of the nest, begin at the furthest possible distance from the nest and work toward the nest such that any removal to be conducted nearest to the nest occurs last.

(6) Prescribed Burns.

Conditions (a)-(d) are required for all nests, regardless of status. For nests that are occupied or status is unknown, conditions (e) and (f) are also required. You must, to the extent practicable:

- (a) Conduct prescribed burns outside of the breeding season. If prescribed burns are conducted during the breeding season, you must document in writing with a justification as to why (e.g., human safety, federal mandates).
- (b) Remove fuels (e.g., leaves, woody debris) near the nest tree to avoid fire climbing the tree. This includes fuels that present a hazard to the nest tree, fuels that are on or close to the bole of the nest tree, and fuels that may loft embers near the nest tree such as palm trees or high shrubs or bushes. To the extent practical, this measure must be performed outside of the breeding season or when the eagle nest is not occupied.
- (c) Avoid creating new fire breaks or fire lines within 660 feet of any bald eagle nest at any time of year. Perform maintenance on any pre-existing fire breaks within 660 feet of a bald eagle nest outside of the breeding season or when the eagle nest is not occupied.

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(d) Utilize smoke management and ignition techniques that minimize the amount and duration of flame and smoke impacts to the nest (e.g., igniting a backing or flank fire).

(e) Minimize the presence of and any activities of ground crews within 660 feet of the nest.

(f) Do not conduct a prescribed burn during weather and wind conditions that are likely to expose the nest to fire or smoke.

(g) You are authorized for the incidental take of eagle nests that occurs during a prescribed burn, provided that incidental take occurs after application of all avoidance and minimization measures. This authorization does not include take caused by lack of due diligence or negligence; for example, failure to identify nest locations prior to conducting an activity.

(7) Motorized and Nonmotorized Recreation.

No measures are required for unoccupied nests. For nests that are occupied or status is unknown, you must, to the extent practicable:

(a) Install signs to create a minimum 330 feet nest buffer around the nest. Signs may be temporary or permanent. Signs should inform recreationists that they are entering an important eagle use area, unless you document doing so is likely to increase risk to eagles.

(b) Close trails, roads, or boat launch areas within 660 feet of the nest. You may reduce this buffer if adult eagles have shown tolerance to use, and you document how you have determined eagles are tolerant to use.

(c) If visiting recreationists are likely to engage in eagle watching, either set up an area for recreationists to view the nest from greater than 660 feet or instruct recreationists to remain at least 330 feet from the nest and observe eagles from their vehicles or from behind natural or artificial barriers. If eagles have demonstrated tolerance, viewing can occur at closer distances. You must document how you have determined eagles are tolerant to viewing within 330 feet.

(d) Do not authorize recreational activities such as camping (including campfires), boating, fishing, and hunting within 330 feet of a nest. You may reduce this buffer if adult eagles have shown tolerance to use, and you document how you have determined eagles are tolerant to use.

(8) Aircraft operation.

No measures are required for unoccupied nests. For nests that are occupied or status is unknown, you must, to the extent practicable:

(a) Avoid any helicopter and fixed-wing aircraft flights within 1,000 feet of an eagle nest during the first three months of the breeding season or until the adults are observed in incubating position.

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(b) Avoid helicopter and fixed-wing aircraft flights within 1,000 feet of an eagle nest at a frequency more than once per day.

(c) Minimize the duration that any helicopter and fixed-wing aircraft spends within 1,000 feet of an eagle nest, not to exceed 3 minutes when passing within 1,000 feet of an eagle nest.

(d) This permit does not authorize disturbance with unmanned aircraft systems (i.e., UAS or drones). Any UAS use must be in a manner that does not cause disturbance, as defined in 50 CFR 22.6.

(9) *Blasting and other loud intermittent activity.*

No measures are required for unoccupied nests. For nests that are occupied or status is unknown, you must, to the extent practicable:

(a) Avoid blasting and any activities that produce other loud intermittent noise within one-half-mile of the nest during the breeding season. If occupancy is known, conduct blasting activities only during the period between when eggs are laid (e.g., adults are incubating position) to when nestlings are at least nine weeks old. Nestling age can be determined by size (i.e., approaching adult size) and posture (e.g., erect, starting to stand on edge of nest).

(b) Use all available methods and technology to reduce the noise generated by your activity. These may include but are not limited to blast mats, vibratory pile driving, or constructed sound barriers.

D. Monitoring. You must, to the maximum degree practicable, observe the permitted eagle nest, sufficient to:

(1) Determine nest status (i.e., occupied or unoccupied) during the breeding season (see Table 1), and

(2) If occupied, determine nest fate (i.e., fledged young or failed to fledge young). Observations must be performed in a manner that does not cause additional disturbance to breeding eagles. For example, observe the nest from beyond 660 feet or from behind screening vegetation or structures.

E. Reporting. You must submit an annual report of nest status and, if occupied, nest fate using Form 3-202-15 (Eagle Incidental Take Annual Report). Your annual report is due within 30 days of the expiration of your permit or prior to requesting renewal of your permit, whichever is first. An annual report is required, even if no eagle activity was observed or no activities were conducted.

F. Subpermittees. You may designate subpermittees to conduct some or all of your permitted activities. A subpermittee is an individual to whom you have provided written authorization to conduct some or all of the permitted activities in your absence. Authorized subpermittees are any

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person who is (1) employed by or under contract to you for the activities specified in this permit, or (2) otherwise designated a subpermittee by you in writing. As the permittee, you are legally responsible for ensuring that your subpermittees are adequately trained and adhere to the terms of your permit.

You and any subpermittees must carry a legible paper or electronic copy of this permit and subpermittee designation letter and display it upon request whenever you are exercising its authority. Subpermittees must be at least 18 years of age. You are responsible for maintaining current records of who you have designated as a subpermittee, including copies of any designation letters provided to individuals not named above.

G. Other Conditions.

(1) You must comply with all of the regulations and permit conditions in 50 CFR parts 10, 13, 21, and 22.

(2) You must keep records of all activities conducted under this permit, including any subpermittee activities carried out under the authority of this permit (see 50 CFR § 13.46).

(3) By accepting this permit, you are authorizing the Service to inspect the location and records relating to the activity (see 50 CFR § 13.21(e)). Service or Service contractors may require access to your project site to ensure general permitting is consistent with eagle preservation. The Service will provide reasonable notice for requests to access sites and negotiate with the permittee about practicable and appropriate access conditions to protect human health and safety and address physical, logistical, or legal constraints.

(4) You are responsible for ensuring that the permitted activity complies with all Federal, Tribal, State, and local laws. This permit is not valid if implementing any of its provisions may affect a listed, proposed, or candidate species or designated or proposed critical habitat under the federal Endangered Species Act, nor has the potential to cause effects to cultural resources or historic properties protected by the National Historic Preservation Act.

(5) The Service may amend, suspend, or revoke a permit issued under this subpart if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in 50 CFR § 13.23, 13.27, and 13.28. General permits cannot be amended by the permit holder.

(6) Notwithstanding the provisions of 50 CFR § 13.26, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

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(7) The Service will regularly evaluate whether the take of bald eagles authorized under general permits remains compatible with the preservation of eagles. If the Service finds, through the best available information, that the general permit program is not compatible with the preservation of bald eagles and golden eagles, the Service may suspend issuing general permits in all or in part after publishing a notice in the Federal Register. If the Service suspends general permitting, take currently authorized under this general permit remains authorized until expiration unless you are notified otherwise.

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Table 1. Bald eagle breeding season dates by state or portions of states.

State	Beginning Breeding Season	End Breeding Season
Alabama	Oct 1	May 30
Alaska	Mar 1	Aug 31
Arizona	Oct 15	Jul 15
Arkansas	Nov 1	Jun 30
California	Dec 1	Aug 15
Colorado	Dec 1	Jul 31
Connecticut	Jan 1	Jul 31
Delaware	Dec 15	Jun 30
District of Columbia	Dec 15	Jul 15
Florida	Oct 1	May 30
Georgia	Oct 1	May 30
Idaho	Jan 1	Aug 15
Illinois	Dec 15	Jul 31
Indiana	Dec 15	Jul 31
Iowa	Jan 1	Jul 31
Kansas	Dec 1	Jul 31
Kentucky	Nov 1	Jul 15
Louisiana	Oct 1	May 30
Maine	Feb 1	Aug 30
Maryland	Dec 15	Jun 30
Massachusetts	Jan 15	Aug 31
Michigan	Jan 15	Aug 15
Minnesota	Jan 15	Aug 15
Mississippi	Oct 1	May 30
Missouri	Dec 15	Jul 15
Montana	Jan 15	Aug 31
Nebraska	Dec 1	Jul 15
Nevada	Dec 1	Jul 31

State	Beginning Breeding Season	End Breeding Season
New Hampshire	Feb 15	Aug 15
New Jersey	Jan 1	Jul 31
New Mexico	Oct 15	Jul 15
New York	Jan 1	Aug 31
North Carolina	Nov 1	Jun 30
North Dakota	Jan 15	Aug 31
Ohio	Jan 1	Jul 31
Oklahoma – except panhandle	Oct 1	May 30
Oklahoma – panhandle only	Oct 15	Jul 15
Oregon	Jan 1	Aug 15
Pennsylvania	Jan 1	Jul 31
Rhode Island	Jan 1	Jul 31
South Carolina	Oct 1	May 30
South Dakota	Jan 15	Aug 31
Tennessee	Nov 1	Jun 30
Texas – east of 100 th meridian	Oct 1	May 30
Texas – west of 100 th meridian	Oct 15	Jul 15
Utah	Dec 1	Jul 31
Vermont	Feb 1	Aug 15
Virginia	Dec 15	Jul 15
Washington	Jan 1	Aug 15
West Virginia	Dec 1	Jul 15
Wisconsin	Jan 15	Aug 15
Wyoming	Jan 1	Aug 15

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