

General Permit Conditions – Incidental Take of Eagles by Power Lines

Definitions (as defined in 50 CFR 22.6 and 22.260 and available at <https://www.ecfr.gov/current/title-50/section-22.6>):

Avian-safe. A power-pole configuration designed to minimize avian electrocution risk by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of the bird. For eagles, this is 150 centimeters of horizontal separation and 100 centimeters of vertical separation. If sufficient separation cannot be provided, exposed parts that conduct electricity must be covered to reduce electrocution risk. If covers are used, they must be maintained in good condition. For conversions from an above-ground line to a buried line, the buried portion is considered “avian-safe.” For purposes of the regulations in 50 CFR 22.260, “avian-safe” means safe for eagles.

Collision response strategy. A plan that describes the process the permittee will follow to identify whether a collision-caused injury or mortality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

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.

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

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.

Proactive retrofit strategy. A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified as high risk to eagles and may also include other poles in the service area.

Reactive retrofit strategy. A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (e.g., convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.

Shooting response strategy. A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

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Definitions for the purposes of these permit conditions:

Existing-infrastructure baseline means all poles that are not avian-safe for eagles and are located in areas identified by the permittee to be high risk to eagles.

Extenuating Circumstances are unforeseen circumstances that may delay implementation of a permit condition to ensure human health and safety, such as an unforeseen need to devote resources due to catastrophic weather, extensive fire, or other events that substantively disrupt power delivery.

High-risk eagle areas are areas where eagles are likely to be present and interact with power line infrastructure. Permittees are responsible for the assessment of their service-area and delineation of high-risk eagle areas, based on this standard.

A. Authorization. You are authorized to take (injure or kill) bald eagles and golden eagles incidental to operations of power line infrastructure in the state(s) listed above under “Location where authorized activity may be conducted.”

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

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.
- (2) Disturbance of breeding eagles.
- (3) Possession of eagles, nestlings, or eggs, except as authorized for disposal purposes as described below in Condition F.

C. Avoidance, Minimization, and Adaptive Management:

- (1) New Poles. All new construction and rebuilding or replacement of poles in high-risk eagle areas must be avian-safe as defined in 50 CFR § 22.260.

Except, if this requirement would unduly impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources, this condition is not required, but you must document in writing why you are not implementing with a justification as to why the measure is not practicable.

The Service recommends the technical reference *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* and any updated versions or new suggested practice documents, as they become available (available at aplic.org).

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(2) New Construction. For new construction, reconstruction, rebuilding, or replacement of poles, you must incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle nests, foraging areas, and roosts to the extent practicable, accounting for the risk to and population status of the species.

Except, if this requirement would unduly impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources, this condition is not required, but you must document in writing why you are not implementing with a justification as to why the measure is not practicable.

(3) Reactive Retrofits. You must develop a reactive retrofit strategy, as defined in 50 CFR § 22.260, and implement that strategy following each discovery of an electrocuted eagle. The investigation, documentation, and retrofit design selection must be completed within 90 days of the incident. The retrofit(s) must be implemented within 1 year of the incident and remain effective for 30 years.

(4) Proactive Retrofits. In lieu of compensatory mitigation, you must implement a proactive retrofit strategy, as defined in 50 CFR § 22.260, to convert all existing-infrastructure baseline to be avian-safe. The proactive retrofit strategy must identify annual targets for the number of poles to be retrofitted. Retrofits must remain effective for 30 years.

(a) Investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 50 years. Therefore, ten percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply (see above definitions).

(b) Non-investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 75 years. Therefore, seven percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply (see above definitions).

(c) Any utility that does not have an existing proactive retrofit plan at the time of permit issuance, or needs to update their existing proactive retrofit plan to meet this condition, must do so as soon as is practicable and no later than April 11, 2027.

(5) Collision Response. You must implement a collision response strategy (see *Definitions*). Within 90 days of a collision, you must complete an investigation where the collision occurred by documenting the factors contributing to the collision and identifying appropriate risk-reduction measures. You must implement selected risk-reductions measures, such as installation of flappers, at the location of the collision within 1 year of the incident. No action may be an appropriate collision response if the incident is determined to be unlikely to occur again.

(6) Eagle-Shooting Response. You must implement an eagle-shooting response strategy (see *Definitions*). If eagle remains, or an injured eagle, is found near power line infrastructure in circumstances that suggest the eagle may have been shot, the permittee must contact the Office of Law Enforcement immediately (and in no case more than 72 hours from the discovery). If

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there are repeated shooting events in the same area, reasonable shooting-reduction measures should be described and implemented as part of the strategy.

The Service does not consider the power line entity at fault when raptors are illegally shot on power line infrastructure.

(7) You are required to create, keep current, implement, and retain the strategies described in this condition and provided them to the Service upon request. These strategies may be combined into a single, comprehensive plan, such as an Avian Protection Plan or a Bird Conservation Strategy. Strategies must be made available to the Service upon request.

D. Monitoring Measures. You are required to implement the following methods to aid in the discovery of dead or injured eagles in the vicinity of your power line activities and infrastructure.

(1) Train on-site personnel, including staff, contractors, and volunteers, to search for eagles and signs of their remains. Training must include how to (i) differentiate eagle remains from other raptor remains, (ii) identify eagle remains to species, (iii) document raptor remains that are identified as a non-eagle species, and (iv) process unidentified raptor remains (see Condition E(4)).

(2) Require that trained on-site personnel visually scan for signs of dead or injured eagles upon arriving at power line infrastructure during their day-to-day activities and remain alert for signs of dead or injured eagles while working at and travelling in the vicinity of power line infrastructure.

E. Reporting. You must report to the Service as set forth below.

(1) For each dead or injured eagle discovered, you must collect the following relevant information and provide this information in your Online Report (condition E(2)):

- (a) Discovery date;
- (b) Collection date;
- (c) Species;
- (d) Sex and age (fledgling, juvenile, adult), if known;
- (e) Alive/Dead (is the bird alive or dead);
- (f) Condition (if alive, indicate if sick or injured; if dead, indicate if intact, freshly killed (eyes moist), semi-fresh (stiff, eyes desiccated), partially decomposed feathers and/or bones, or other);
- (g) GPS coordinates in decimal degrees with datum clearly identified (the reference system that geographic coordinates are associated with such as WGS 84) for the location where discovered;
- (h) How remains were discovered and how remains were identified;
- (i) Hazard type (type and configuration of structure or features found near eagle remains and potentially responsible for injury/mortality);
- (j) Ground distance from hazard (estimated or exact distance from remains discovered to nearest pole, line, or other structure);
- (k) Possible cause of mortality/injury (e.g., collision with wire, collision with other structure,

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electrocution, other);

(l) Disposition (e.g., freezer onsite, National Eagle Repository, left in place, rehabilitator, Office of Law Enforcement (OLE));

(m) If banded or marked, Federal band number, color markers, or transmitter descriptions and date report submitted to reportband.gov;

(n) Any special notes or additional information (e.g., if associated with a mortality event involving unusually high numbers of eagle takes associated with a particular circuit or structure; weather conditions at likely time of death, if known); and

(o) Photos of the eagle remains, taken as close to the time of discovery as possible, including image of whole remains from top and bottom and the bird's leg(s) (including foot/feet), head (including eyes and bill), and tail. If remains are unidentifiable, include as many photos as you can to aid in future identification efforts.

(2) *Online Report.* You must report all dead or injured eagles discovered in the Service's Injury and Mortality Reporting System (IMR) no later than two weeks from the date of discovery of eagle remains or the eagle injury. Reports must include all information required in permit condition E(1).

(3) *Annual Report.* You must submit an annual report of all dead or injured eagles discovered in the previous year using Form 3–202–15. You must include with this form an exported IMR report of your activities/entries for the previous year. Reports can be uploaded into ePermits under this permit record or sent, via email, to the *Issuing Office* contact email on the face of this permit, with the subject line "EAGLE GENERAL PERMIT ANNUAL REPORT". Include your permit number in the email. Reports must be submitted electronically by January 31 following each year the permit is valid.

(4) If remains of any large birds are discovered and cannot be identified to species, these remains must be treated as eagle remains until proven otherwise. You must collect and report the relevant information in condition E(1), take good quality photographs of the remains, and provide it in an Online Report as described in condition E(2). For items E(1)(c-d), you must state that remains are unidentifiable. You must also include discoveries of unidentified remains in your Annual Report.

F. Disposition. You must dispose of all discovered eagles or eagle remains as set forth below, unless you are directed otherwise by the Service. Remains must be shipped or disposed of on the timeline specified by the recipient below, not to exceed 2 weeks of discovery.

(1) *Injured Birds.* If an eagle is injured, you must immediately contact a federally permitted migratory bird rehabilitator or a licensed veterinarian and follow their instructions for transport, care, and/or disposition of the injured eagle. To locate a rehabilitator near you, visit <https://www.fws.gov/story/find-migratory-bird-rehabilitation-facility>. We encourage you to offset the costs of treating eagles injured by your operations by paying rehabilitation expenses through donations, in-kind assistance, or other means. If you cannot make contact with a rehabilitator or licensed veterinarian, local law enforcement officers may be of assistance.

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(2) *Freshly Deceased*. Except as noted in conditions F(3-5), if a discovered eagle is freshly dead (has no smell, eyes are not sunken in, and the body is intact and has not been scavenged) or has a telemetry unit, contact the Southeast Cooperative Wildlife Disease Study Lab (SCWDS Lab) at 706-542-1741 to see if the remains are acceptable for shipment and if the lab is able to accept them. If the SCWDS Lab is able to accept the remains, fill out the lab's submission form. If possible, refrigerate remains rather than freezing. Ship the remains as directed by the lab.

(3) *Freshly Deceased in California*: All freshly dead eagle remains or telemetered eagle remains discovered in California should first be offered to the California Department of Fish & Wildlife (CDFW) Wildlife Health Laboratory. Upon collection, eagle remains should be labeled, with the date and location where they were discovered and collected, into a plastic bag (use care not to break or bend feathers). Under most conditions, eagle remains can be frozen until submission. Contact the CDFW Wildlife Health Laboratory at 916-358-2790 or by email at WILAB@wildlife.ca.gov. You will receive more detailed instructions, including packaging and shipping instructions, upon making contact. If the CDFW lab does not agree to accept the eagle remains in question, implement condition F(2) and F(6) as appropriate.

(4) *Freshly Deceased in Michigan*: All freshly dead eagle remains or telemetered eagle remains discovered in Michigan should first be offered to the Michigan Department of Natural Resources (MDNR) Wildlife Disease Lab. For specific shipping instructions for this lab, please contact 517-336-5034 (office), 517-336-5116 (necropsy), or by email at CooleyT2@michigan.gov. If the MDNR lab does not agree to accept the eagle remains in question, implement condition F(2) and F(6) as appropriate.

(5) *Deceased in New York*: Send all dead or euthanized eagles discovered in New York state, regardless of postmortem condition, to the New York State Department of Environmental Conservation Wildlife Health Unit lab in Delmar, NY. This lab will perform a complete necropsy to determine cause of death and monitor for disease and contaminants. Submission and shipping instructions can be found at https://www.dec.ny.gov/docs/wildlife_pdf/eagleship.pdf. Please contact the lab at 518-478-2203 if you need additional information. If the New York Wildlife Health Unit Lab does not agree to accept the eagle remains in question, implement condition F(2) and F(6) as appropriate.

(6) *Other Eagle Remains*. If the eagle is not freshly dead, the lab is not able to receive the remains, or it is not feasible for you to ship the remains to the lab, you must contact the National Eagle Repository at repository@fws.gov. Follow the Repository instructions for shipping or disposal of the remains.

G. 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 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.

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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.

H. 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). Your records must include an internal, discovered-eagle reporting system for bald eagle and golden eagle remains found at the site of the activity.

(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 activity involving the take of eagles authorized by this general permit complies with all other applicable 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 effect 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.

(7) The Service will regularly evaluate whether the take of bald eagles and golden eagles 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

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preservation of bald eagles or 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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