Eagle Take Permitting: General Permit Proactive Retrofit Strategy

Frequently Asked Questions and Answers

In February 2024 the U.S. Fish and Wildlife Service (Service) created permits for incidental take of eagles by power lines (50 CFR 22.260), including a general permit option. To be eligible for a general permit, an applicant must meet eligibility requirements in 50 CFR 22.260 (c) - (d), including a commitment to create and implement four strategies: a proactive retrofit strategy, a reactive retrofit strategy, a collision response strategy, and a shooting response strategy. This FAQ describes and clarifies the Service's expectations for the proactive retrofit strategy under general permits. A proactive retrofit strategy is not required for specific permits.

1. What is a proactive retrofit strategy?

A *proactive retrofit strategy* (50 CFR 22.260(b) "Proactive retrofit strategy") is a plan that describes how a permittee will retrofit their existing-infrastructure baseline poles to avian-safe in the next 50 years (for investor-owned utilities) or 75 years (for non-investor-owned utilities).

2. Why does the Service require a proactive retrofit strategy for general permits?

The proactive retrofit strategy requirement meets two regulatory criteria: it meets avoidance and minimization requirements, and it ensures that the permit is compatible with the preservation of the bald eagle or the golden eagle (50 CFR 22.6) without additional compensatory mitigation.

The proactive retrofit strategy must meaningfully reduce eagle electrocution risk at permitted power-line infrastructure over time. It is not expected that this strategy will eliminate all of a power line entity's electrocution risk. Instead, permitted utilities are expected to progressively retrofit or replace poles that are not avian-safe to reduce risks to eagles across the system. A compliant proactive retrofit strategy is intended to reduce eagle electrocutions sufficiently to at least offset authorized eagle take at the permitted infrastructure when compared with conditions that would exist without the associated general permit and its conservation requirements.

3. What does it mean to retrofit a pole to be avian-safe?

Avian-safe is defined in regulation (50 CFR 22.260) as *"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".

A retrofit is complete when a pole is made avian save and a commitment is made by the permittee to maintain the retrofit for 30 years.

4. What is a "proactive retrofit inventory"?

A proactive retrofit inventory is the set of poles identified as the "existing-infrastructure baseline" to be converted to avian-safe during the applicable regulatory timeframe (50 years for investor-owned utilities and 75 years for other utilities). The Service refers to this set of poles as the *proactive retrofit inventory* to distinguish it from other uses of the term "baseline." The proactive retrofit inventory must include poles that are not avian-safe for eagles. It must include all non-avian-safe poles located in areas identified by the permittee as high-risk to eagles. A permittee may also include non-avian-safe poles outside high-risk areas.

5. How do I identify the poles in my proactive retrofit inventory?

Permittees may use the approach they determine appropriate for identifying their proactive retrofit inventory, provided the inventory meets the requirements described above. Permittees should maintain records documenting the methodology used to identify their proactive retrofit inventory and the poles included, as this information may be requested by the Service. Service review or approval of the proactive retrofit inventory is not required. However, the Service is available to provide technical assistance in developing an approach for identifying their proactive retrofit inventory. The proactive retrofit inventory must be practicable, such that the proactive retrofit commitment can be accomplished within the regulatory timeframe; but also comprehensive, such that more poles are being proactively retrofit (compared to retrofit rates prior to permit issuance) and adding additional poles would make it impossible to complete the proactive retrofit commitment.

6. How do I identify areas that are high-risk to eagles?

Areas that are high-risk to eagles occur where eagles are likely to be present and interact with power line infrastructure. Conversely, low-risk eagle areas occur where eagles are not present or unlikely to interact with power line infrastructure. The permittee is responsible for the assessment of high-risk eagle areas based on this standard.

To identify high-risk eagle areas, the Service recommends using the best available information to identify where eagle use is likely to overlap with power-line infrastructure. This assessment may include evaluating the spatial relationship between available information on the location of power-line infrastructure and information on bald eagle and golden eagle use of the service area. Power line information may include circuit or feeder maps, rights-of-way, or utility corridor maps. Eagle information may include broader-scale information, such as eagle abundance and

distribution, as well as more site-specific information, such as nest and roost locations or eagle habitat. The Service can assist permittees in identifying or obtaining appropriate eagle use information.

7. Is there a resource available to assist with defining a proactive retrofit inventory?

Establishing a proactive retrofit inventory requires the consideration of many types of information. These considerations, and the methods chosen for determining an inventory, are unique to each permittee. The Avian Powerline Interaction Committee (APLIC) has created a resource that outlines these considerations and provides recommendations for entities developing their proactive retrofit inventory. It is available on APLIC's website at: www.aplic.org.

8. What poles in my proactive retrofit inventory should I be prioritizing for retrofitting?

The Service recommends prioritizing retrofitting the highest-risk poles in the proactive retrofit inventory, when practicable. However, utilities may consider operational needs and other factors, such as natural disaster response, when determining the timing and sequence of retrofits. Any pole in the proactive retrofit inventory converted to avian-safe counts toward the proactive retrofit requirement, regardless of why the work was performed. Permittees should track poles they retrofit to be avian-safe and update their inventory accordingly.

9. What is the process for changing a proactive retrofit inventory?

Permittees should reassess and update their proactive retrofit inventory, as appropriate, during each general permit term. This reassessment should consider changes to both power line infrastructure and areas identified as high-risk to eagles. If new high-risk eagle areas are identified, non-avian-safe poles in those areas must be added to the proactive retrofit inventory. Conversely, non-avian-safe poles may be removed if an area is no longer identified as high-risk to eagles. When poles are added to or removed from the proactive retrofit inventory, the retrofit commitment should be recalculated based on the updated inventory and the time remaining in the applicable regulatory timeframe. Despite any changes to the proactive retrofit inventory, it should remain practicable and comprehensive, as described in #5 above.

Permittees must maintain records documenting changes to the proactive retrofit inventory, including when and why the inventory was revised.

10. What is the 3-year 'grace period'?

The Service recognizes that developing a proactive retrofit strategy takes time, especially when new regulatory requirements take effect. To address that issue, power line entities that obtain a general permit before April 11, 2027, will have until April 11, 2027, to develop their proactive retrofit strategy. April 11, 2027, is not a deadline to apply for a general permit. However, power line entities that obtain a general permit on or after this date must have a strategy prepared for the application and begin implementing it upon permit issuance.

11. How is compliance evaluated?

Permittees are expected to make progress toward converting their proactive retrofit inventory to avian-safe infrastructure within the applicable regulatory timeframe. The Service evaluates progress based on the proactive retrofit inventory identified for the current permit term, the retrofits completed during that term, and the time remaining in the applicable regulatory timeframe (50 years for investor-owned utilities and 75 years for other utilities).

The Service recognizes that unforeseen circumstances, such as natural disasters or other emergencies, may require utilities to temporarily prioritize maintaining or restoring reliable power delivery over planned proactive retrofits; however, such circumstances should be the exception and should not result in a recurring pattern of delayed progress toward the proactive retrofit requirement.

Permittees must maintain records sufficient to demonstrate progress toward meeting the proactive retrofit requirement. Reporting progress to the Service is not required; however, permittees must maintain records documenting their proactive retrofit strategy, any changes to the inventory, and progress toward completing the requirement. The Service recommends records identify the overall retrofit goal and target date, the corresponding number of poles to be completed within each 5-year permit term, and the current pole inventory, along with the estimated number of poles completed to date and whether the power line entity ahead, on, or behind schedule. If behind, include the reason and plan to catch up. Permittees must be prepared to provide a summary of this information to the Service upon request.

12. Can poles in a proactive retrofit inventory be used to offset take authorized by other eagle take permits?

Specific permits are available for utilities interested in using power-pole retrofits as compensatory mitigation for other eagle take permits. Under general permits, utilities cannot use retrofits of poles in their proactive retrofit inventory as compensatory mitigation for eagle take authorized under other permits. Because the proactive retrofit inventory must include all non-avian-safe poles in areas identified as high-risk to eagles, retrofitting those poles is already required as a condition of the power-line general permit and cannot also be credited as compensatory mitigation for other authorized take.

For additional technical resources, application materials, and permit information, please visit the Service's Eagle Management website.