**Bald and Golden Eagle Protection Act**

**Incidental Take Proposed Rule**

**Supplementary Information**

The recovery of the bald eagle is one of the most important wildlife conservation success stories of the United States. The U.S. Fish and Wildlife Service’s goal is to ensure that regulations for eagle permits are consistent with the goal of maintaining stable or increasing breeding populations for both bald eagles and golden eagles. Human development and infrastructure continue to expand in the United States, and at the same time, bald eagle populations continue to grow throughout their range. The result of these trends is an increasing number of interactions between eagles and human activities and a corresponding need for the Service to process more applications for the incidental take of eagles. The Service and the regulated community share an interest in introducing more efficiency and effectiveness into the eagle incidental take permitting process, facilitating, and improving compliance while increasing the conservation benefit for eagles.

On September 30, 2022, the Service published a [proposed rule](https://www.federalregister.gov/documents/2022/09/30/2022-21025/permits-for-incidental-take-of-eagles-and-eagle-nests) and draft environmental assessment with approaches to improve the eagle incidental take permitting program. This document provides an overview of that proposed rule. For any sections of interest, more detail can be found in the regulation and preamble.

# Background

* This section describes the Bald and Golden Eagle Protection Act (Eagle Act), previous incidental take regulations, and the biological status of bald and golden eagles. We also summarize the nature of comments received on the [Advance Notice of Proposed Rulemaking](https://www.federalregister.gov/documents/2021/09/14/2021-19717/eagle-permits-incidental-take) for this rule.

# This Rulemaking

* The preamble provides a detailed overview of the regulations. The Service proposes revised provisions for processing specific permits (sometimes called individual permits) and adds a general permit alternative for eligible activities. General permits would be available to authorize incidental take by activities that are consistent with the preservation standard of the Eagle Protection Act and frequent enough that the Service has developed a standardized approach to permitting. We propose regulations for the following activities:
	+ Wind energy generation projects
	+ Power line infrastructure
	+ Disturbance take of eagles
	+ Eagle nest take
* The proposed regulations also restructure the existing specific permit regulations for eagle take that is associated with, but not the purpose of, an activity (50 CFR 22.80) and removal of eagle nests (50 CFR 22.85).
* This section also includes a description of changes to definitions, required administration and application fees, other administrative changes.

# Public Comments

* This section describes the process for receiving and reviewing public comments on the proposed rule and includes specific information the Service is seeking from the public. We also provide a schedule of information sessions to inform the public of our proposed action, activities it would cover, alternative proposals under consideration, and the associated draft environmental documents. We propose to hold two sessions for federally recognized Native American Tribes and two general sessions for the public. Information for attending webinars can be found at: <https://fws.gov/regulations/eagle>

# Required Determinations

* This section documents our compliance with the requirements of numerous Executive Orders and statutes, including an analysis of impacts to small businesses and other economic effects.
* This section also describes our compliance with the Paperwork Reduction Act. This proposed rule contains existing and new information collections. A number of existing information collections for Eagle Act permitting expire in 2023 and the Service is using this rulemaking to update these in addition to seeking new information collections associated with the revised regulations.

# Proposed Regulation Promulgation

* For these regulations, we propose amendments to parts 13 and 22 of title 50 of the Code of Federal Regulations.

# Part 13 – General Permit Procedures

* We propose to amend this part to allow applicants to submit a single application for multiple permits issued by the same office. We provide circumstances under which we will not charge an application fee.
* We also update the permit fee table with application fees for general and specific permits.
	+ Note: The application fees are designed to cover the costs to the Service of issuing each permit type. In addition, for general permits, the application fee is designed to cover the costs of establishing an audit program to review a portion of general permits to ensure compliance with the regulations. The administration fee is designed to fund monitoring necessary to administer the program.

# Part 22 – Eagle Permits

* We propose to amend this part to revise existing and add new definitions. We also add a new Subpart E for eagle permit regulations authorizing incidental take.

*Specific Permits (§* *22.200)*

* Specific permits authorize the take of bald or golden eagles for projects that have high or uncertain risks to eagles and would benefit from review by Service staff. These projects do not meet the requirements for a general permit.
* Applicants must prepare and submit their applications to the Service in which the activity is conducted. The application must include a description of the project; justification for the take; assessment of impacts to eagles; and proposed practices to avoid, minimize, and compensate for eagle deaths. There are also specific application requirements for qualifying activities.
* The Service decides whether to issue a permit based on the requirements of this section. The issued permit contains conditions specific to the project, such as avoidance and minimization measures, monitoring, and reporting requirements.
* Applicants must pay an application fee, administration fee, and implement compensatory mitigation or secure eagle credits from a Service-approved conservation bank or in-lieu fee program.
* The tenure of a specific permit is a maximum of 30 years.
* This proposed regulation removes the current third-party monitoring requirements. This provision was infeasible for many projects. The intent of this provision is replaced with a permittee certification that all information, including monitoring information, is accurate.

*General Permits (§* *22.210)*

* General permits authorize the take of bald and golden eagles for projects that have moderate risks to eagles and well-established and effective avoidance and minimization measures.
* Applicants self-identify eligibility and register with the Service by submitting an application that includes a description of the project, justification for the take, duration of the permit requested, and certification that the activity complies with all other applicable laws. There are also specific application requirements for qualifying activities.
* Service review is not required prior to obtaining a permit. Eligible projects are required to implement all activity-specific conditions listed in the associated regulations, including, if required, securing the required eagle credits from a Service-approved conservation bank or in-lieu fee program.
* Applicants must pay an application fee of $500. Applicants for the wind energy incidental take general permit and the power line incidental take general permit must also pay an administration fee of $2650 per turbine or $5,000 per state, respectively, to cover the costs of Service-conducted monitoring necessary to administer the program.
* The tenure of a general permit is a maximum of 5 years.

*Conditions of permits (§* *22.215)*

* This section provides the conditions common to all permit types.
* Unless otherwise specified, permit holders are required to train onsite personnel to visually scan for eagle remains and conduct visual scans when onsite. Personnel must notify the Service of any eagles found injured or dead.
* Permit holders must keep records of all activities conducted under these regulations and comply with Service reporting requirements. Activities may be subject to audit, on-site inspection, or be required to participate in Service monitoring.
* The Service may amend, suspend, or revoke a permit if new information indicates it is necessary to safeguard local or regional eagle populations.

*Compensatory Mitigation (§* *22.220)*

* This section details standards for compensatory mitigation, if required by permit conditions. This section is largely the same as existing regulations.
* Compensatory mitigation would be calculated to account for both the project’s impacts and the population status of the species for which incidental take is requested.
* Compensatory mitigation must be approved by the Service. General permittees meet this requirement by obtaining required credits from a Service-approved third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider described in this section.
* This section is designed to be in compliance with the Service’s mitigation policy.

*Permits for incidental take of eagles by wind energy projects (§* *22.250)*

* This section establishes general and specific permits to authorize the incidental take of eagles by wind energy projects.
* To qualify for a general permit, projects must meet the following requirements:
	+ All turbines of a project must be located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species established in the regulation. The goal is to avoid issuing general permits in areas of relatively high risk to each eagle species. Such projects would need to seek specific permits
	+ Projects must be located at least two miles away from golden eagle nests and 660 feet away from bald eagle nests. This provides an additional, finer scale screen of projects to avoid issuing general permits to projects that pose a relatively high risk to eagles.
* A specific permit may be obtained for projects that do not meet the general permit eligibility requirements.
* For general permits only, permittees would be required to implement a monitoring program of trained onsite staff to scan for dead eagles. If three eagles of any one species are discovered during the tenure of a general permits, permittees must notify the Service within two weeks and implement an adaptive management measure. A fourth dead eagle makes the project ineligible for future general permits, as such a project is deemed of high risk to eagles.
* Both general and specific permittees would be required to develop an adaptive management plan, remove anthropogenic hazardous attractants to eagles, minimize collision and electrocution risks, pay the required application and administration fees, and implement compensatory mitigation.
* The amount of compensatory mitigation required is scaled based on wind turbine characteristics and which Eagle Management Unit the project is located in. General permit applicant must obtain the required permits from a Service-approved in-lieu fee program or conservation bank, and specific permit applicants must submit a compensatory mitigation plan.
* General permits are valid for a maximum of five years, and specific permits may not exceed 30 years.

*Permits for incidental take of eagles by power lines (§* *22.260)*

* This section establishes general and specific permits to authorization the incidental take of eagles by power line infrastructure.
* There are no unique general permit eligibility requirements for power line projects beyond provisions in 22.210. Essentially, any utility is eligible for a general permit.
* General permittees would be required to:
	+ Ensure that all new construction and reconstruction of poles is electrocution-safe;
	+ Incorporate information on eagles into siting and design considerations;
	+ Implement a reactive retrofit plan, proactive retrofit plan, eagle collision response plan, and eagle-shooting response plan; and
	+ Train personnel to scan for eagle remains when onsite and implement internal reporting and recordkeeping procedures.
* Note that many utilities already have an Avian Protection Plan. The Service anticipates that the requirements of these general permits can largely be met with relatively minor adjustments to existing Avian Protection Plans.
* A specific permit may be obtained for power line entities that qualify but do not wish to obtain a general permit or have been notified by the Service to obtain a specific permit.
* Permittees would be required to pay an application and administration fee.
* General permits are valid for a maximum of five years, and specific permits may not exceed 30 years.

*Permits for disturbance take of eagles (§ 22.280)*

* This section authorizes the incidental take of bald or golden eagles by disturbance, generally in the form of activities close to in-use eagle nests.
* Activities that qualify for a general permit for disturbance include the following within specified distances of bald eagle nests:
	+ Building construction and maintenance
	+ Linear infrastructure construction and maintenance
	+ Alteration of shorelines and water bodies
	+ Alteration of vegetation
	+ Motorized and nonmotorized recreation
	+ Aircraft operation
	+ Loud intermittent noises
* A specific permit may be obtained if the activity may result in the disturbance of a golden eagle nest, for a bald eagle nest for an activity not specified in the regulation, or for disturbance to a foraging area.
* All permittees must implement measures to avoid and minimize nest disturbance, avoid activities that negatively affect nesting substrate, and implement monitoring of in-use nests. Permittees must also submit an annual report.
* General permits are valid for a maximum of one year, and specific permits may not exceed five years.

*Permits for take of eagle nests (§ 22.300)*

* This section authorizes the take of a bald eagle nest or a golden eagle nest, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure.
* General permits would be available for bald eagle nest take for emergency, health and safety, or a human-engineered structure, or, if located in Alaska, bald eagle nest take for other purposes.
* A specific permit may be obtained for any take of a golden eagle nest or for take of a bald eagle nest for species protection or other purposes.
* To receive a specific permit for species protection, the application must:
	+ Apply as a Federal, state, or Tribal agency responsible for implementing actions for the protection of the species of concern
	+ Include documentation that describes relevant management efforts, identifies how eagles are a limiting factor to survival, and explains how take of eagle nests is likely to have a positive outcome on species recovery.
* Permit conditions may require permittees to adjust the timing of the activity to minimize take, minimize renesting, or obstruct, relocate, or monitor the nest.
* General permits are valid for a maximum of one year, and specific permits may not exceed five years.