



Protections for Raptors

Raptors, or birds of prey, and the majority of other birds in the United States are protected by the [Migratory Bird Treaty Act](#), 16 U.S.C. 703 (MBTA). A complete list of migratory bird species can be found in the Code of Federal Regulations at [50 CFR 10.13](#). Eagles are afforded additional protections under the [Bald and Golden Eagle Protection Act](#), 16 U.S.C. 668 (Eagle Act). In addition to the MBTA and the Eagle Act, the U.S. Fish and Wildlife Service (Service) works with federal agencies to promote the conservation of migratory birds, including eagles and other raptors, on lands under their jurisdiction through Executive Order 13186 (66 FR 3853; January 17, 2001).

The MBTA protects migratory birds, eggs and nests from possession, sale, purchase, barter, transport, import, export, and take. The regulatory definition of take, defined in [50 CFR 10.12](#), means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to hunt, shoot, wound, kill, trap, capture, or collect a migratory bird. Activities that result in the intentional, unpermitted take of migratory birds or their eggs are illegal and fully prosecutable under the MBTA. On October 4, 2021, effective December 3, the Service published a final rule revoking the January 7, regulation that limited the scope of the MBTA. The Service is again implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and long-standing agency practice prior to 2017. Removing or destroying active nests (i.e., nests that contain eggs or young) or causing abandonment of an active nest with intent could constitute a violation of the MBTA, the Eagle Act, or both statutes. Therefore, if nesting migratory birds are present on or near a project area, project timing is an important consideration during project planning. For additional information concerning nesting birds and protections under the MBTA, please see the Service's Migratory Birds Program page at <https://www.fws.gov/program/migratory-birds>. As discussed below, the Eagle Act provides additional protections for bald and golden eagles and their nests.

The Service's Wyoming Ecological Services Field Office works to raise public awareness about the possible occurrence of birds in proposed project areas and the risk of killing or injuring birds or destroying active nests. Our office provides recommendations to minimize the likelihood that injury or death will occur. We encourage you to coordinate with our office before conducting actions that could lead to the death or injury of a migratory bird, their young, eggs, or the abandonment or destruction of active nests (e.g., construction or other activity in the vicinity of an active nest). If nest manipulation is proposed for a project in Wyoming, the project proponent should contact the Service's Migratory Bird Management Office in Lakewood, Colorado at 303-236-8171 to see if a permit can be issued. Permits generally are not issued for an active nest of any migratory bird species, unless removal of the nest is necessary to address human health and safety. If a permit cannot be issued, the project may need to be modified to avoid impacting migratory birds, their young or eggs.

For infrastructure (or facilities) that have potential to cause direct avian mortality (e.g., wind turbines, guyed towers, airports, wastewater disposal facilities, transmission lines), we recommend locating structures away from high avian-use areas such as those used for nesting, foraging, roosting or migrating, and the movement zones between high-use areas. If the wildlife survey data available for the proposed project area and vicinity do not provide the detail needed to identify normal bird habitat use and movements, we recommend collecting that information prior to determining locations for any infrastructure that may create an increased potential for avian mortalities. Please contact the Service's Wyoming Ecological Services Field Office for project-specific recommendations.

Additional Protections for Eagles

The Eagle Act protections include provisions not included in the MBTA, such as the protection of unoccupied nests and a prohibition on disturbing eagles. Specifically, the Eagle Act prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagle or their body parts, nests, chicks or eggs, which includes collection, possession, molestation, disturbance, destruction, or killing. The term



“disturb” is defined as “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” ([50 CFR 22.3](#) and see also [72 FR 31132](#)).

The Eagle Act includes limited exceptions to its prohibitions through a permitting process. The Service has issued regulations concerning the permit procedures for exceptions to the Eagle Act’s prohibitions ([81 FR 91494](#); December 16, 2016), including permits to take golden eagle nests which interfere with resource development or recovery operations ([50 CFR 22.25](#)). The regulations identify the conditions under which a permit may be issued (i.e., status of eagles, need for action), application requirements, and other issues (e.g., mitigation, monitoring) necessary in order for a permit to be issued.

In Wyoming we recommend a 1.0-mile buffer for bald eagles due to the sparse tree cover and the limited number of bald eagles in the state. For additional recommendations specific to Bald Eagles please see our national [Eagle Management](#) web page.

Recommended Steps for Addressing Raptors in Project Planning

Using the following steps in early project planning, agencies and proponents can more easily minimize impacts to raptors, streamline planning and permitting processes, and incorporate measures into an adaptive management program:

1. Coordinate with appropriate Service offices, Wyoming Game and Fish Department, tribal governments, and land-management agencies at the earliest stage of project planning.
2. Identify species and distribution of raptors occurring within the project area by searching existing data sources (e.g., Wyoming Game and Fish Department, Wyoming Natural Diversity Database, federal land-management agencies) and by conducting on-site surveys.
3. Plan and schedule short-term and long-term project disturbances and human-related activities to avoid raptor nesting and roosting areas, particularly during crucial breeding and wintering periods.
4. Determine location and distribution of important raptor habitat, nests, roost sites, migration zones and, if feasible, available prey base in the project impact area.
5. Document the type, extent, timing, and duration of raptor activity in important use areas to establish a baseline of raptor activity.
6. Ascertain the type, extent, timing, and duration of development or human activities proposed to occur, and the extent to which this differs from baseline conditions.
7. Consider cumulative effects to raptors from proposed projects when added to past, present, and reasonably foreseeable actions. Ensure that project mitigation adequately addresses cumulative effects to raptors.
8. Minimize loss of raptor habitats and avoid long-term habitat degradation. Mitigate for unavoidable losses of high-valued raptor habitats, including (but not limited to) nesting, roosting, migration, and foraging areas.
9. Monitor and document the status of raptor populations and, if feasible, their prey base post-project completion, and evaluate the success of mitigation efforts.
10. Document meaningful data and evaluations in a format that can be readily shared and incorporated into wildlife databases (contact the Service’s Wyoming Ecological Services Field Office for details).



Protection of nesting, wintering (including communal roost sites), and foraging activities is considered essential to conserving raptors. To promote the conservation of migratory bird populations and their habitats, federal agencies should implement those strategies directed by Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” ([66 FR 3853](#)).

Raptors of Conservation Concern

The [Service’s Birds of Conservation Concern \(2021\) report](#) identifies “species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing” under the Endangered Species Act (16 U.S.C 1531 et seq.). This report is intended to encourage coordinated and proactive conservation actions among federal, state, and private partners. The [Wyoming Partners in Flight Wyoming Bird Conservation Plan](#) identifies priority bird species and habitats, and establishes objectives for bird populations and habitats in Wyoming. This plan also recommends conservation actions to accomplish the population and habitat objectives. We encourage project planners to develop and implement protective measures for the Birds of Conservation Concern as well as other high-priority species identified in the Wyoming Bird Conservation Plan.

Recommended Seasonal and Spatial Buffers to Protect Nesting Raptors

Because many raptors are particularly sensitive to disturbance during the breeding season, we recommend implementing spatial and seasonal buffer zones to protect individual nest sites/territories (Table 1). The buffers serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees. The size and shape of effective buffers vary depending on the topography and other ecological characteristics surrounding the nest site. In open areas where there is little or no forested or topographical separation, distance alone must serve as the buffer. Adequate nesting buffers will help ensure activities do not result in the death of breeding birds, their young or eggs. For optimal conservation benefit, we recommend no temporary or permanent surface occupancy occur within species-specific spatial buffer zones. For some activities with very substantial auditory impacts (e.g., seismic exploration and blasting) or visual impacts (e.g., tall drilling rig), a larger buffer than listed in Table 1 may be necessary; please contact the Service’s Wyoming Ecological Services Field Office for project-specific recommendations on adequate buffers.

As discussed above, for infrastructure that may create an increased potential for raptor mortalities, the spatial buffers listed in Table 1 may not be sufficient to reduce the incidence of raptor mortalities (for example, if a wind turbine is placed outside a nest disturbance buffer, but inadvertently still within areas of normal daily or migratory bird movements); therefore, please contact the [Service’s Wyoming Ecological Services Field Office](#) for project-specific recommendations on adequate buffers.

Buffer recommendations may be modified on a site-specific or project-specific basis based on field observations and local conditions. The sensitivity of raptors to disturbance may depend on local topography, density of vegetation, and intensity of activities. Additionally, individual birds may be habituated to varying levels of disturbance and human-induced impacts. Modification of protective buffer recommendations may be considered where biologically supported and developed in coordination with the Service’s Wyoming Ecological Services Field Office.



Because raptor nests are often initially not identified to species (e.g., preliminary aerial surveys in winter), we first recommend a generic raptor nest seasonal buffer of January 15th to August 15th. Similarly, for spatial nesting buffers, until the nesting species has been confirmed, we recommend applying a 1-mile spatial buffer around the nest. Once the raptor species is confirmed, we then make species-specific and site-specific recommendations on seasonal and spatial buffers (Table 1).

Activities should not occur within the spatial/seasonal buffer of any nest (occupied or unoccupied) when raptors are in the process of courtship and nest site selection. To help conserve raptor populations, long-term land-use activities and human-use activities should not occur within the species-specific spatial buffer of occupied nests. Short-term land use and human-use activities proposed to occur within the spatial buffer of an occupied nest should only proceed during the seasonal buffer after coordination with the Service, state, and tribal wildlife resource management agencies, and/or land-management agency biologists. If, after coordination, it is determined that due to human or environmental safety or otherwise unavoidable factors, activities require temporary incursions within the spatial and seasonal buffers, those activities should be planned to minimize impacts and monitored to determine whether impacts to birds occurred. Mitigation for habitat loss or degradation should be identified and planned in coordination with applicable agencies.

Please contact the Service's Wyoming Ecological Services Field Office if you have any questions regarding permit requirements, or if you require technical assistance regarding the MBTA, Eagle Act, or the above recommendations. The below spatial and seasonal buffers are voluntary (unless made a condition of permit or license) and are not regulatory, and they do not supersede provisions of the MBTA, Eagle Act, the [Destruction and Relocation of Migratory Bird Nest Contents memorandum](#), dated June 14, 2018, and Endangered Species Act. Assessing legal compliance with the MBTA or the Eagle Act and the implementing regulations is ultimately the authority and responsibility of the Service's law enforcement personnel. Our recommendations also do not supersede federal, state, local, or tribal regulations or permit conditions that may be more restrictive.



Table 1. Service’s Wyoming Ecological Services Field Office’s Recommended Spatial and Seasonal Buffers for Breeding Raptors

Raptors of Conservation Concern (see below for more information)		
Common Name	Spatial buffer (miles)	Seasonal buffer
Golden Eagle	0.50	January 15 - July 31
Ferruginous Hawk	1.00	March 15 - July 31
Swainson's Hawk	0.25	April 1 - August 31
Bald Eagle	see Bald Eagle information web page ¹	
Prairie Falcon	0.50	March 1 - August 15
Peregrine Falcon	0.50	March 1 - August 15
Short-eared Owl	0.25	March 15- August 1
Burrowing Owl	0.25	April 1 – September 15
Northern Goshawk	0.50	April 1 - August 15
Additional Wyoming Raptors		
Common Name	Spatial buffer (miles)	Seasonal buffer
Osprey	0.25	April 1 - August 31
Cooper's Hawk	0.25	March 15 – August 31
Sharp-shinned Hawk	0.25	March 15 – August 31
Red-tailed Hawk	0.25	February 1 – August 15
Rough-legged Hawk (winter resident only)	----	----
Northern Harrier	0.25	April 1 - August 15
Merlin	0.50	April 1 - August 15
American Kestrel	0.125	April 1 – August 15
Common Barn Owl	0.125	February 1 – September 15
Northern Saw-whet Owl	0.25	March 1 - August 31
Boreal Owl	0.25	February 1 – July 31
Long-eared Owl	0.25	February 1 – August 15
Great Horned Owl	0.125	December 1 – September 30
Northern Pygmy-Owl	0.25	April 1 – August 1
Eastern Screech -owl	0.125	March 1 – August 15
Western Screech-owl	0.125	March 1 – August 15
Great Gray Owl	0.25	March 15 – August 31

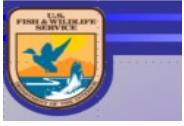
¹<https://www.fws.gov/species/bald-eagle-haliaeetus-leucocephalus>

Additional Planning Resources

Avian Power Line Interaction Committee (APLIC). 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. Edison Electric Institute and APLIC. Washington, D.C.

Avian Power Line Interaction Committee (APLIC). 2006. Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.

Edison Electric Institute’s Avian Power Line Interaction Committee and U.S. Fish and Wildlife Service. 2005. Avian Protection Plan Guidelines.



- U.S. Fish and Wildlife Service. 2020. Eagle Management. <https://www.fws.gov/library/collections/bald-and-golden-eagle-management>
- U.S. Fish and Wildlife Service. 2013. Eagle Conservation Plan Guidance Module 1 – Land-based Wind Energy Version 2. Arlington, Virginia. 118 pp.
- U.S. Fish and Wildlife Service. 2007. National Bald Eagle Management Guidelines. United States Department of Interior, Fish and Wildlife Service, Arlington, Virginia. 23 pp.
- U.S. Fish and Wildlife Service. 2000. Siting, Construction, Operation and Decommissioning of Communications Towers and Tower Site Evaluation Form (Director’s Memorandum September 14, 2000), Arlington, Virginia.

References

- 50 CFR 10.12 – Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 10--General Provisions.
- 50 CFR 10.13– Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 10--General Provisions.
- 50 CFR 22.3 – Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 22—Eagle Permits.
- 50 CFR 22.25– Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 22—Eagle Permits.
- 66 FR 3853 - Presidential Documents. Executive Order 13186 of January 10, 2001. Responsibilities of Federal Agencies To Protect Migratory Birds. Federal Register, January 17, 2001.
- 72 FR 31132 - Protection of Eagles; Definition of “Disturb”. Final Rule. Federal Register, June 5, 2007.
- 74 FR 46836 - Eagle Permits; Take Necessary To Protect Interests in Particular Localities. Final Rule. Federal Register, September 11, 2009.
- 81 FR 91494 - Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests. Final Rule, Federal Register, December 16, 2016.
- U.S. Fish and Wildlife Service. 2003. Migratory Bird Permit Memorandum, MBMP-2, Nest Destruction (Directors Memorandum April 15, 2003), Washington, D.C.
- U.S. Fish and Wildlife Service. 2008. Birds of Conservation Concern 2008. United States Department of Interior, Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, Virginia. 85 pp.