

# Permits for Incidental Take of Eagles and Eagle Nests – Final Rule Guidance

On February 12, 2024, USFWS [published a final rule](#) on permits for the incidental take of eagles and eagle nests. The rule was effective April 12, 2024. This document summarizes those changes.

## What the final rule affects:

- The U.S. Fish and Wildlife Service (USFWS) is responsible for managing and conserving bald and golden eagles under the [Bald and Golden Eagle Protection Act](#)<sup>1</sup>. The Act prohibits take of eagles (including their parts), nests or eggs without a permit.
- USFWS can issue permits for incidental take of eagles (nest disturbance and incidental kill/injure) and nest take.

## What the final rule does:

- It expanded eagle/nest take permitting options and is intended to streamline the application and issuance process for some actions.
- Prior to the new rule, USFWS issued only *specific permits* for *nest take* and *incidental take*, which required review of all application materials prior to permit issuance.
- The new rule allows USFWS to also issue *general permits* for low risk activities that have well established mitigation measures.
- It also created new *take* permit categories by action type (disturbance, wind energy, power lines).

## What the final rule does **not** do:

- Change the expectations for when a permit is needed. Permits can still be avoided by implementing avoid/minimization measures (e.g., buffers, timing restrictions).
- See: [Do I need an eagle take permit?](#)



## **Disturbance Take Permits (50 CFR 22.280)**

These permits authorize the take of bald/golden eagles caused by [disturbance](#).

- **General permit:**
  - Only apply to bald eagles (specific permits are required for golden eagles).
  - Only apply to disturbance resulting from:
    - Linear infrastructure construction/maintenance within 660 ft of a nest
    - Building construction/maintenance within 660 ft of a nest
    - Aircraft operation within 1,000 ft of an in-use nest
    - Alterations of shorelines/waterbodies within 660 ft of a nest
    - Alteration of vegetation/prescribed burns within 660 ft of a nest
    - Loud intermittent noise (includes blasting) within 0.5-mile of an in-use nest
    - Motorized/non-motorized recreation within 300 ft of an in-use nest

<sup>1</sup> Eagles are also protected under the federal Migratory Bird Treaty Act.

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- Require adherence to the [permit's special conditions](#), which includes avoidance and minimization measures.
- Monitoring and annual reporting are required, but level of effort is less than a specific permit. Compensatory mitigation is not required.
- Valid for 1 year. General permit audits will be performed.
- **Specific permit:**
  - Covers:
    - Disturbance to golden eagles
    - Disturbance to bald eagles from activities not covered under a general permit
    - Elimination of all foraging areas within an eagle territory
    - Disturbance take on Tribal land unless the Tribal government is the applicant
  - Monitoring, annual reporting and compensatory mitigation are mandatory.
  - Valid for up to 5 years.

### **Eagle Nest Take Permits (50 CFR 22.300)**

These permits authorize the take of eagle nests for emergency, health and safety, removal from human-engineered structures, Endangered Species Act (ESA) wildlife protection, and other purposes.

- **General permit:**
  - Only apply to bald eagle nests (specific permits are required for golden eagle nests).
  - Limited to:
    - Human/eagle safety emergencies (alternate nest or in-use nest)
    - Protection of public health/safety (alternate nest or in-use nest prior to egg laying)
    - Functional hazards for a human-engineered structure (alternate nest or in-use nest prior to egg laying)
  - Applies to the removal of one specific nest and any new nesting attempts within 0.5 mile if similar emergency, safety, or hazard situation applies.
  - Requires adherence to the [permit's special conditions](#), which includes avoidance and minimization measures.
  - Monitoring and compensatory mitigation are not required; however, an annual report must be submitted
  - Valid for 1 year.
- **Specific permit:**
  - Covers:
    - Golden eagle nests
    - Nest take when necessary for the protection of ESA threatened/endangered wildlife (alternate nest or in-use nest prior to egg laying)
    - Other purposes (i.e., take of alternate nest to protect an interest that provides a net benefit to eagles)
  - Monitoring and compensatory mitigation may be required.
  - Valid for up to 5 years.

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## Additional eagle guidance:

### **How do I know where eagle nests are located?**

- Per USFWS, statements regarding the presence/absence of eagle nests in the USFWS Information for Planning and Consultation (IPaC) Official Species List should not be relied upon.
- WDNR has a historic inventory of eagle nests in the Natural Heritage Inventory (NHI) portal. Since 2020, WDNR is no longer completing statewide aerial nest surveys (only very limited surveys are done). Verified nests are still uploaded to the NHI portal if submitted to them.
- At some point in the future, WDNR may no longer hold these historic records. WisDOT staff will be informed when this change occurs.
- Until that time, WDNR will notify WisDOT if a historic nest record occurs within 1 mile of a project through the initial review letter NHI review. They will continue to share guidance on avoidance/minimization if the nest record is within 900 ft of the project. Please see [Do I need an eagle take permit?](#) for USFWS’s eagle permit guidance.
- If there are historic nests within the project area and/or potentially suitable habitat in the project area, it may be necessary to complete field review for nests in the project area.

### **What are the eagle breeding season dates for Wisconsin?**

- USFWS eagle biologists indicated the breeding season dates are from **January 15 through August 15**. However, WDNR provides guidance that the dates are January 15 through July 31. USFWS has acknowledged the difference in dates. USFWS has regulatory authority over eagles. The longer set of dates must be used unless coordination with USFWS occurs to adjust the breeding season end date.
- If necessary (e.g., based on a project’s schedule constraints), a request to change the end avoidance date (no earlier than Aug 1), can be sent to: [PermitsR3MB@fws.gov](mailto:PermitsR3MB@fws.gov). See the [Do I need an eagle take permit?](#) for a list of information to send along with the request.

### **How do I apply for eagle permits?**

- Discuss the project with the WisDOT region environmental coordinator (REC) and/or statewide ecologist (Jen Gibson) to confirm permit need/type.
- Apply online via [USFWS e-permitting](#) under WisDOT’s business account. Application process is relatively similar to [MBTA depredation permits](#) (see REC/ecologist for details).
- Coordinates of the nest and other supporting materials must be provided to USFWS.
- Disturbance or nest take permits will be issued as specific permits in 2024 unless the activities start on/after September 1, 2024.

**Additional resource:** [National Bald Eagle Management Guidelines](#)