

WHAT YOU SHOULD KNOW ABOUT A FEDERAL MIGRATORY BIRD SPECIAL PURPOSE UTILITY PERMIT

Below is a review of several provisions of a Federal Migratory Bird Special Purpose Utility permit (hereafter referred to as a Special Purpose Utility permit). U.S. Fish and Wildlife Service (Service) regulations governing migratory bird permits are at Title 50 Parts 10, 13 and 21.27 of the Code of Federal Regulations (CFR). **You are responsible for reviewing and understanding these regulations before you request a permit.** These regulations can be found on our website at: <http://www.fws.gov/permits/ltr/ltr.html>.

1. What does a Special Purpose Utility Permit authorize?

A Special Purpose Utility permit authorizes utilities to collect, transport and temporarily possess migratory birds found dead on utility property, structures, and rights-of-way for avian mortality monitoring or disposal purposes. The permits require that the company maintain records of mortalities and injuries, and that they report the information to the Service. The permits are valid for 3 years.

2. What is the purpose of a Special Purpose Utility permit?

By permitting collection of parts and carcasses, the permit will enhance a utility's ability to accurately monitor migratory bird mortalities. It enables a company to retain specimens to confirm identification. It also enables a company conducting standardized searches to sweep an area of specimens prior to a search. Collecting and reporting the associated data to the Service contributes to our collective knowledge and understanding of the impacts of the utility on migratory birds.

Special Purpose Utility permits are also intended to promote standardized collection and reporting of mortality data to maximize our ability to compare data across the landscape for particular utilities. This will greatly increase the value of the information collected and better serve efforts to develop conservation measures.

3. What is meant by "utility"?

A utility is a business that owns or operates a facility that generates or transmits electricity, gas, oil or water to the public. For purposes of this permit, it also includes businesses that own or operate communications structures such as cellular towers, microwave transmitters, and their related infrastructure.

4. What birds can be collected under a Special Purpose Utility Permit?

Birds protected under the Migratory Bird Treaty Act (MBTA) may be collected. Essentially all native bird species in the United States, with the exception of upland game birds, are protected under the MBTA. The species are listed in title 50 part 10.13 of the Code of Federal Regulations (50 CFR 10.13). To view a list of species go to <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtintro.html>. Bald eagles and golden eagles receive additional protection under the Bald and Golden Eagle Protection Act (BGEPA).

5. Does this permit authorize take of migratory birds and eagles?

No. Take includes, among other things, shoot, wound, kill, trap, or capture migratory birds and eagles. This permit does not authorize take of migratory birds or eagles, nor does it absolve the utility from liability for take. A permit is now available for non-purposeful take of bald eagles and golden eagles under the BGEPA (see <http://www.fws.gov/migratorybirds/baldeagle.htm>). However, no permit is available for the take of other migratory birds.

6. Are utilities required to obtain Special Purpose Utility Permit?

No. A Special Purpose Utility Permit is necessary only if the utility plans to collect, transport, or possess dead migratory birds or parts, or contract someone to conduct these activities on its behalf. The permit will be issued only to the utility company, not a consultant.

7. Do Special Purpose Utility Permits differ for different utilities?

The various types of utilities differ considerably in size, structure, footprint, operations, [knowledge base](#), and [impact](#). Consequently, Special Purpose Utility permits will differ where appropriate for the different types of

utilities (e.g., electric, wind, solar). However, within a particular utility, the permits will be standardized across all Service regions. This will facilitate permit management and compliance by companies with multiple projects. Although our goal is consistency, when appropriate, we try to accommodate special circumstances or existing agreements.

8. Can utilities move active nests that are at risk or pose a human safety risk?

Active nests most often create problems for electric utilities, particularly when nests are built on transformers or they block emergency access to a line in need of repair. Therefore, Special Purpose Utility permits issued to electric utilities will typically authorize relocation of active nests on structures if they are causing a public safety risk, such as a fire or power outage, or operator safety. Emergency active nest relocation may be considered for other utilities on a case-by-case basis. ***This provision would not apply to bald eagles, golden eagles, or federally listed threatened or endangered species, for which a separate permit under those laws would be needed.***

9. Must a company have an avian protection plan or migratory bird conservation plan to qualify for a Special Purpose Utility Permit?

Not necessarily. Although the Service encourages utilities to prepare an avian protection plan or conservation plan in cooperation with the Service to guide siting, construction and operation of energy facilities, a plan is not a prerequisite for a Special Purpose Utility Permit.

10. Where can a company obtain information about developing a post-construction mortality monitoring plan?

The Service's Land-Based Wind Energy Guidelines and the Eagle Conservation Plan Guidance both provide information about designing a scientifically rigorous avian mortality monitoring plan. Although both of these documents are directed at wind energy facilities, the fatality monitoring methods and metrics may aid other types of utilities in siting and operations. Both documents are available at <http://www.fws.gov/windenergy>.

11. Are other permits needed to collect dead migratory birds?

A Federal Special Purpose Utility permit is not valid unless the permittee also complies with other applicable Federal, State, Tribal, or local requirements. This means that if a State requires you to have a permit to collect dead migratory birds, you must have one in order for the Federal permit to be valid. It is the permittee's responsibility to ensure compliance with any other permit requirements.

12. Can a consultant obtain a Special Purpose Utility permit?

No. The permits will be issued only to utility companies. A consultant may act on behalf of a company to develop the monitoring plan, permit application, and reports, and conduct the field work. However, the Principal Officer of the utility project must sign the application and is responsible for the activities that occur on the property.

13. Can a researcher obtain a Migratory Bird Scientific Collecting Permit to collect migratory birds found dead on utility property?

No. Migratory birds that may have been killed or injured by the operation of a utility may not be collected except under the authority of a Special Purpose Utility permit or by state or federal law enforcement officers, or other designated personnel. However, the Service will consider on a case-by-case basis applications for Scientific Collecting Permits that include a study proposal designed to address a research question or hypothesis that transcends operations of an individual facility. The Migratory Bird Scientific Collecting Permit application (form 3-200-7) can be found at <http://www.fws.gov/forms/3-200-7.pdf>.

14. Can a corporation that owns multiple utility projects throughout a state or the nation obtain a single Special Purpose Utility permit to cover migratory bird mortality monitoring at all of their projects?

No. A separate permit is required for each project or operation. The company should submit its application to the Service Regional Migratory Bird Permit Office in the Service Region where the project is located. If the project spans multiple Regions, you must obtain a permit from each Region the project spans. For instance, if a transmission line runs from Texas to Georgia, an application should be submitted to the Southwest Regional Migratory Bird Permit Office for the portion in Texas and to the Southeast Migratory Bird Permit Office for the portion that runs through Louisiana, Mississippi, Alabama and Georgia. A list of the Service Regions is included with the application package and at <http://www.fws.gov/migratorybirds/mbpermits/addresses.html>.

15. If the company or operation is sold, can the permit be transferred to the new owner?

No. Permits are not transferrable (see 50 CFR 13.25). The new owner must apply for a new permit. If the new owner adopts ongoing avian mortality monitoring studies for uninterrupted monitoring, the new company should reference this in its permit application and identify the researcher(s) involved to facilitate processing of the new application.

16. Does the utility need to have listed on its permit the name of anyone who may salvage birds under it?

No. As with most migratory bird permits, agent and subpermittee management is the responsibility of the permittee. Typically company employees whose duties include handling wildlife are automatically covered by the permit. For instance, linemen working for an electric transmission company whose official duties involve picking up carcasses would be authorized to pick up, transport, and temporarily possess carcasses provided they also collect the associated data specified in the permit. Also, anyone under contract to the company for the activities specified in the permit and either named on the permit or designated by the permittee in writing as a subpermittee, may exercise the authority of the permit. The utility company is responsible for the activities of anyone working under its permit. [Subpermittees must carry a copy of the permit and any written permission when conducting the authorized activities.](#)

17. Does this permit authorize the Service to inspect utility property?

Yes. Acceptance of a permit authorizes the Director's agent to enter the permittee's premises at any reasonable hour to inspect the wildlife, records, and property, and for compliance with the terms of the permit.

18. Will a company be required to keep records of its activities?

Yes. Every Special Purpose Utility permit holder must maintain accurate records of the permitted activities on a calendar-year basis. The records must include all of the data associated with each formal carcass search and incidental find and each carcass or part collected. These records must be kept for at least 5 years after the expiration of the permit.

19. What is the reporting requirement for Special Purpose Utility Permits?

Permit holders are required to report to the Service all birds found dead or injured on utility property. Generally, report requirements include such information as species (if known), date discovered, condition of the specimen, GPS coordinates or other identifying information for where found, suspected cause of mortality, and disposition of carcass or injured bird.

20. Is there a new process for reporting?

Yes. The Service is transitioning from a paper format to an electronic format. Ultimately, all Service permitting and reporting will be done through an online database that is currently under development. In the interim, two alternative methods are available:

A. You may report the incident using the Avian Injury/Mortality Reporting System (AIMRS) database (form 3-202-17). You will download the form at <http://www.fws.gov/forms/3-202-17.pdf> and use the database to create an Excel spreadsheet to submit to your migratory bird permit office.

B. You may submit to your permit office an Excel spreadsheet from your own database in lieu of using AIMRS provided all of the "required" information in AIMRS (in exact AIMRS format) is included.

21. Will the Service protect the application and report information submitted by the permittee?

We request that you identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under the Freedom of Information Act (FOIA). Confidential business information must be clearly marked "Business Confidential" at the top of the letter or page and each succeeding page and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.26 – 2.33.] **The Service does not consider simple mortality report data (e.g., species, date discovered, quantity, location/project) to constitute confidential business information and may make that information available to the public.**

22. What will the Service do with the report data it collects from utility companies?

Our goal is to ensure that all information collected is important and actually necessary for the Service to assess impacts of utilities and work with the industry to identify conservation measures.

23. What is the process for permit renewal?

A renewal letter or form and annual report form will be sent to each permittee at least 60 days prior to the expiration of its permit. If we receive the renewal request at least 30 days prior to the expiration of the permit, it will remain valid beyond the expiration date for the activity authorized on the expired permit until we make a decision on the renewal. If we receive the renewal request fewer than 30 days prior to expiration of the permit and are unable to process the request before the expiration date, the permit will expire. If a company allows its permit to expire before requesting renewal, it may be required to submit a new application (see 50 CFR 13.22 and 13.11(c)).

24. What information is required to renew the permit?

In addition to any updates in the monitoring protocols, a renewal request must include information on any adjustments or measures that were taken by the permittee to avoid or minimize mortalities as a result of the monitoring, and if so, any preliminary results of those modifications. Additional information may be required for specific types of utilities.

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