Updated
2/17/2023

NDOT Bald and Golden Eagle Protection Act (BGEPA) Procedure

What is it?

- Enacted in 1940, the federal Bald and Golden Eagle Protection Act (BGEPA) prohibits anyone from "taking" bald or golden eagles, their parts, nests, or eggs.
  - "Take" is defined as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

- Disturbances are defined as actions that "agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause,
  - injury to an eagle,
  - a decrease in its productivity, by substantially interfering with normal breeding, feeding or sheltering behavior, or,
  - nest abandonment, by substantially interfering with normal breeding, feeding or sheltering behavior" (50 CFR 22.6).

- To comply with BGEPA, the U.S. Fish and Wildlife Service (Service) and the Nebraska Game and Parks Commission (Commission) have recommended that the project proponent (i.e., FHWA or NDOT) determine whether the project would impact bald or golden eagles. If it is determined that either species could be affected by the proposed project, further coordination with the Service and Commission should take place.

Why is it important to NDOT?

- *Since the bald eagle was federally delisted in 2007 (and also state delisted), the BGEPA is one of the laws that still provide protection for the bald eagle.*
- *The bald eagle is also protected under the Migratory Bird Treaty Act (MBTA) and the Lacey Act.*
- *Impacts on bald and golden eagles are federally prohibited. All NDOT projects must comply with the BGEPA and must result in no "take" of bald or golden eagles.*
- *Violations of the BGEPA can result in a fine of $200,000 for organizations ($100,000 for individuals), imprisonment for 1 year, or both, for first offenses. Penalties increase substantially for additional offenses. A second violation of the BGEPA is a felony.*

Dates to remember:

NOTE - dates are based on current known information about both species in Nebraska and are subject to change as new scientific information becomes available

- Bald Eagle nesting season: December 1 – July 15, with a majority of nesting behavior starting closer to mid-December.
- Golden Eagle nesting season: Approximately January 15 – approximately September 15

How does it affect a project?

If bald or golden eagles are present within or near a project area, restrictions may be placed on the timing, location, and types of activities permitted to occur. These restrictions may include limited work during the breeding season and construction activity "buffers" (no work zones) surrounding known bald or golden eagle nest sites.

How does NDOT comply?

1. NDOT PQS or an NDOT designated reviewer will determine if the project is within or near a known or potential bald or golden eagle nest site, communal roost site (50 CFR 22.6), or within or near suitable nesting habitat.

    a. Overlay project maps with Species Range Maps and the Natural Heritage data layer for most recent known occurrences of bald and golden eagle nests and known communal roosting sites.

    b. Examine aerial imagery to determine if the project is located within ½-mile of suitable eagle nesting habitat and/or known communal roosts. Note that suitable nesting habitat for bald eagles includes trees associated with rivers, streams, impoundments, or lakes while suitable nesting habitat for golden eagle nesting includes rocky outcrops, cliff faces, or rock escarpments.

    c. If the NDOT PQS is performing a field visit, they will check for suitable nesting/roosting habitat at that time and document their observations. Note – this step is optional, as field visits are not required to determine if the project is within/near suitable nesting/roosting habitat (see 1.b above).

2. If suitable habitat or known nest / communal roost locations are identified within ½-mile of the Project, NDOT PQS will utilize the USFWS Nebraska Ecological Services Field Office (NESFO) and NGPC's Bald Eagle Survey Protocol, Golden Eagle Habitat Assessment Protocol, and NDOT's Avian Protection Plan to determine if active nests or roost sites are located within ½-mile of the project.

3. If the surveys find no eagle nests in the action area, the project would be determined to have "no effect" on bald or golden eagles. NDOT PQS will document these findings in a No-Effect Memo (NEM), Eagle Survey Form (NDOT), Overview of Effects and Required Conservation Conditions (OERCC) form, or other document to the file, as appropriate.

4. If an active nest is identified during surveys:

   NOTE - *An active nest is a nest that is attended, built, maintained or used by a pair of eagles during a given breeding season, whether or not eggs are laid. An alternate or inactive nest is a nest that is not used for breeding by eagles during a given breeding season.*

   a. NDOT PQS will coordinate with NDOT Construction, USFWS NESFO and NGPC to determine what avoidance and minimization measures could be implemented to ensure that the project will not result in a "take" of bald or golden eagles.

   b. If impacts can be avoided and minimized so as to not result in a take, NDOT PQS will initiate and coordinate the use of appropriate construction activity avoidance and minimization measures (i.e., timing of construction, buffers around known nesting sites by working with project contractors or design) with the NDOT Construction Project Manager and District Environmental Coordinator as the project proceeds.

   c. If a "take" is not able to be avoided, NDOT PQS will inform both the USFWS NESFO and NGPC that impacts to eagles cannot be avoided and then begin the process to acquire a permit for eagle take that is associated with, but not the purpose of, the activity per 50 CFR 22.26 (Eagle Take Permit). See Attachment-A for the Eagle Take Permit Application Process.

When to consider BGEPA in the Environmental Review Process?

- During scoping or scheduling
- Prior to advancing plans
- During construction

Helpful references:

Driscoll, D. E. 2010. Protocol for golden eagle occupancy, reproduction, and prey population assessment. American Eagle Research Institute, Apache Jct., AZ. 55pp.

Katzner, T. E., M. N. Kochert, K. Steenhof, C. L. McIntyre, E. H. Craig, and T. A. Miller (2020). Golden Eagle (Aquila chrysaetos), version 2.0. In Birds of the World (P. G. Rodewald and B. K. Keeney, Editors). Cornell Lab of Ornithology, Ithaca, NY, USA. https://doi.org/10.2173/bow.goleag.02

NGPC. December 9, 2014. Bald Eagle Survey Protocol.

NGPC. April 2014. Golden Eagle Habitat Assessment and Survey Protocol

NDOT's Avian Protection Plan - https://dot.nebraska.gov/media/3952/avian-protection-plan.pdf

Silcock, W.R., and J.G. Jorgensen. 2021. Golden Eagle (Aquila chrysaetos). In Birds of Nebraska — Online. www.BirdsofNebraska.org

Silcock, W.R., and J.G. Jorgensen. 2021. Bald Eagle (Haliaeetus leucocephalus). In Birds of Nebraska — Online. www.BirdsofNebraska.org

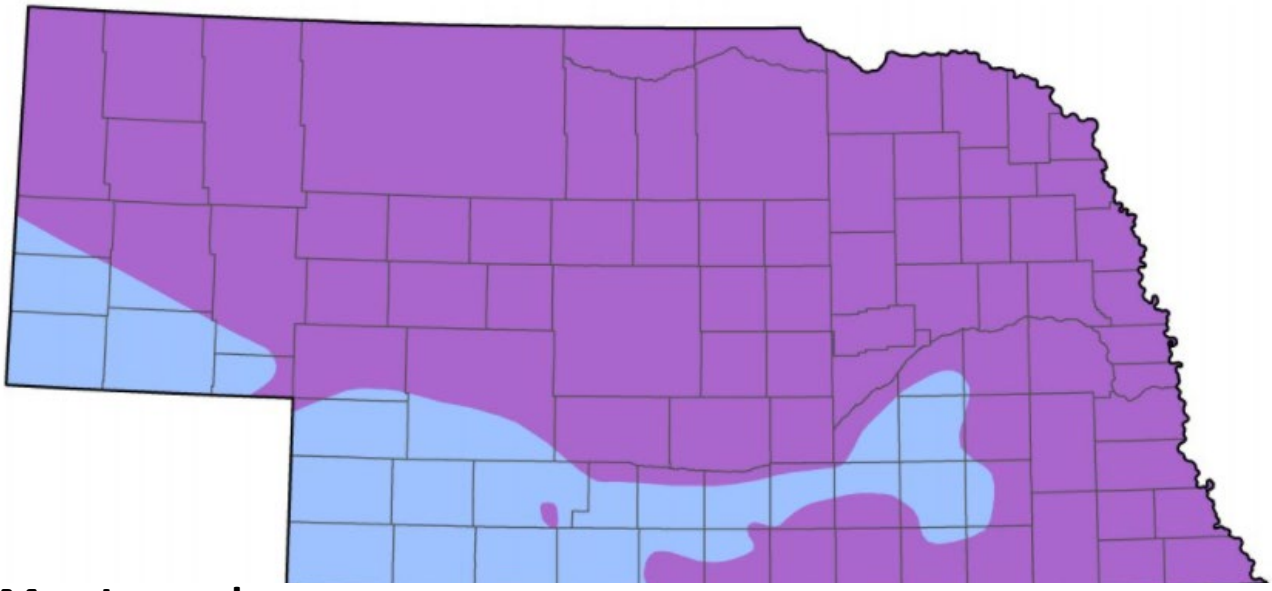
U.S. Fish and Wildlife Service Bald and Golden Eagle Protection Act Webpage: https://www.fws.gov/law/bald-and-golden-eagle-protection-act

U.S. Fish and Wildlife Service Eagle Management Guidelines, May 2007: https://www.fws.gov/sites/default/files/documents/national-bald-eagle-management-guidelines_0.pdf

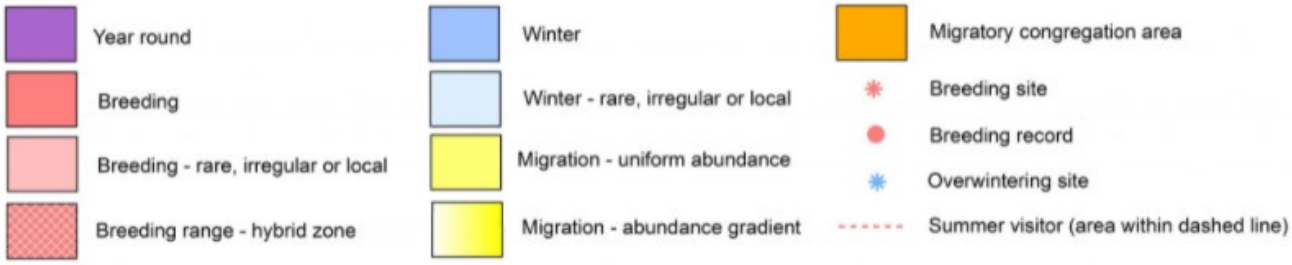
Wind Energy and Nebraska's Wildlife: Avian Assessment Guidance for Wind Energy Facilities Draft Version 3.1. February 2012, https://outdoornebraska.gov/wp-content/uploads/2015/12/Avian_risk_assessment_protocol_VERSION-3.1__February2012.pdf

HALIAEETUS LEUCOCEPHALUS

Status: Common, locally abundant, regular **winter** visitor statewide. Common regular **spring** and **fall** migrant statewide. Uncommon regular **resident** statewide, except southwest and southern Panhandle. Uncommon regular **summer** visitor statewide.

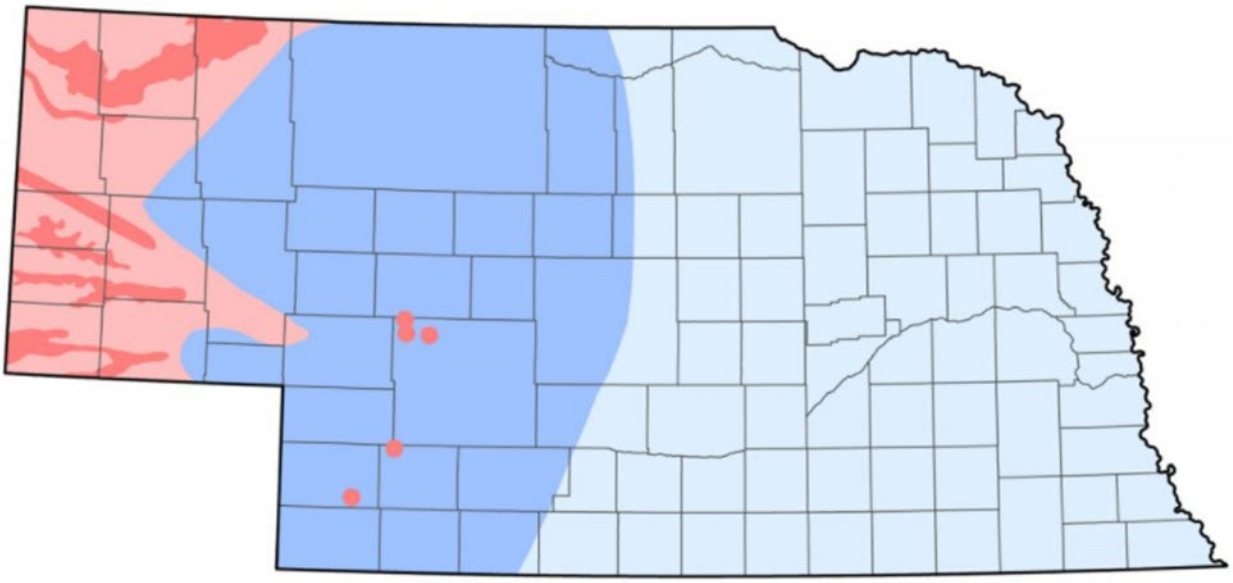


Map Legend

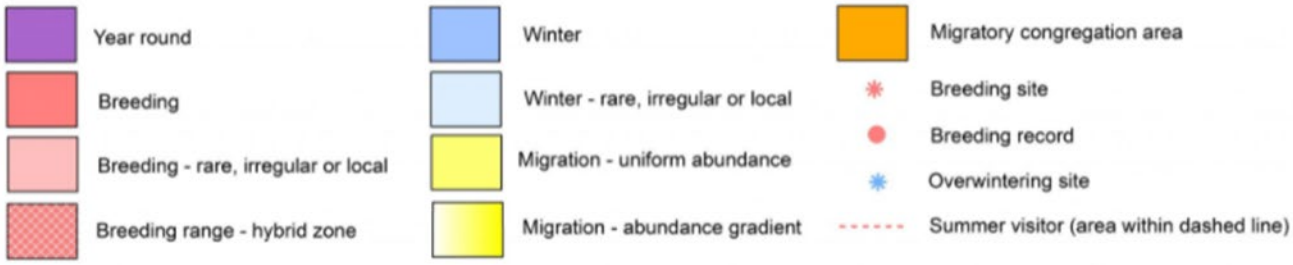


AQUILA CHRYSAETOS CANADENSIS

Status: Uncommon regular **spring** and **fall** migrant west and central, rare east. Uncommon regular **resident** west. Uncommon regular **winter** visitor west and central, rare casual east.



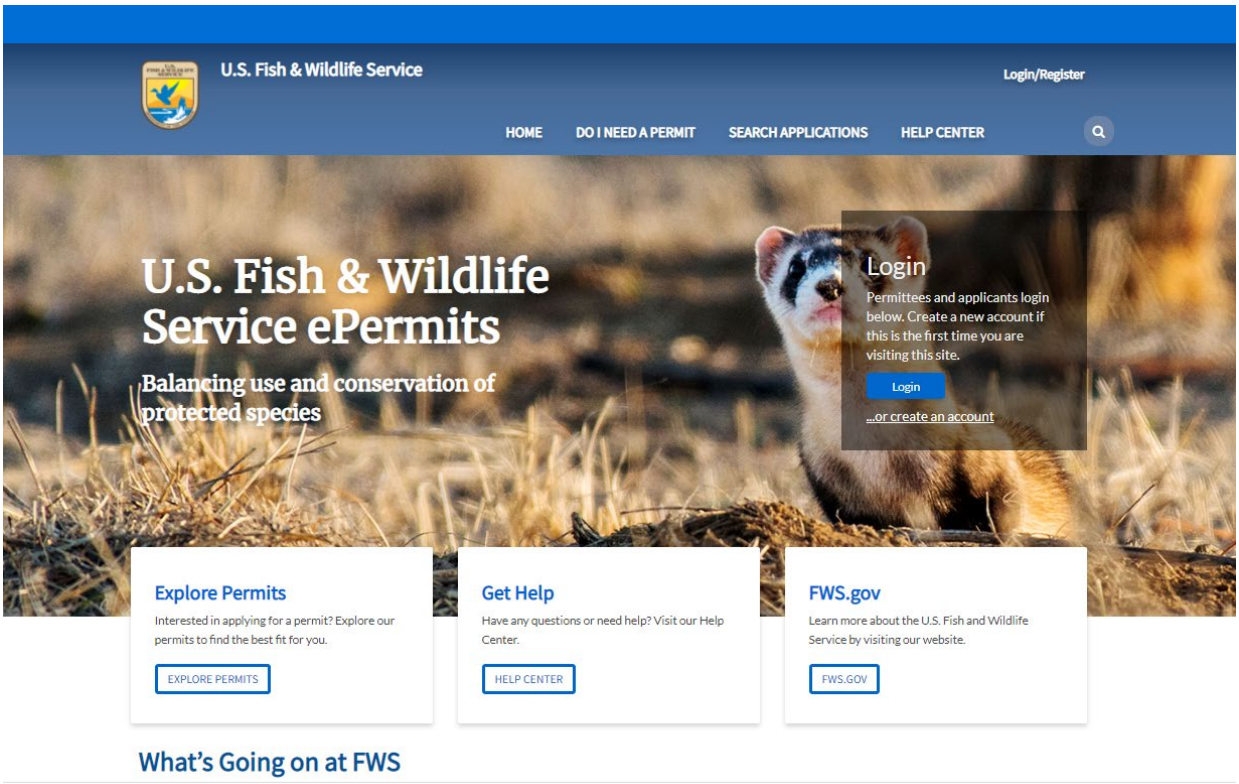
Map Legend



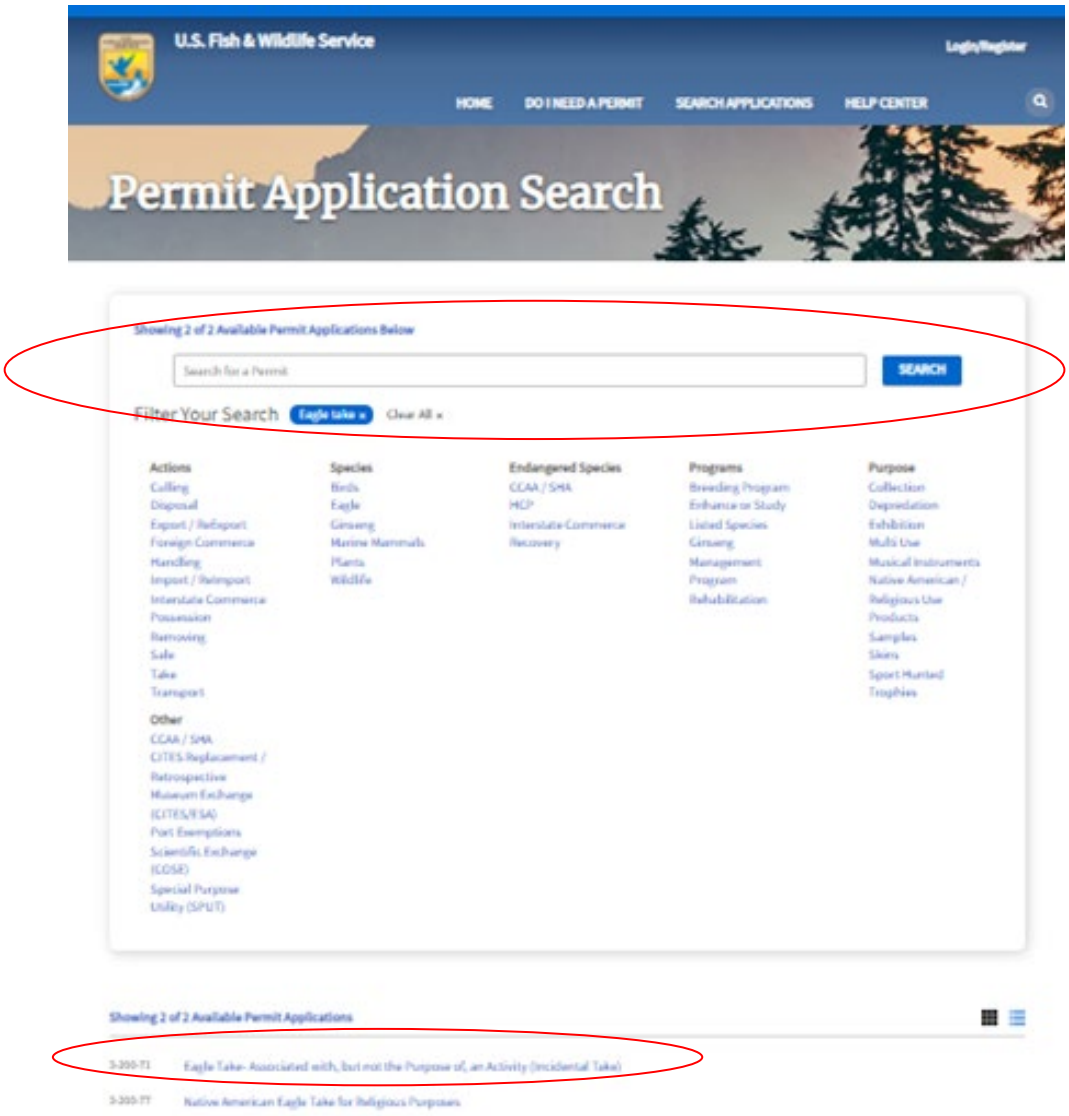
Attachment A

Eagle Take Permit Application Process

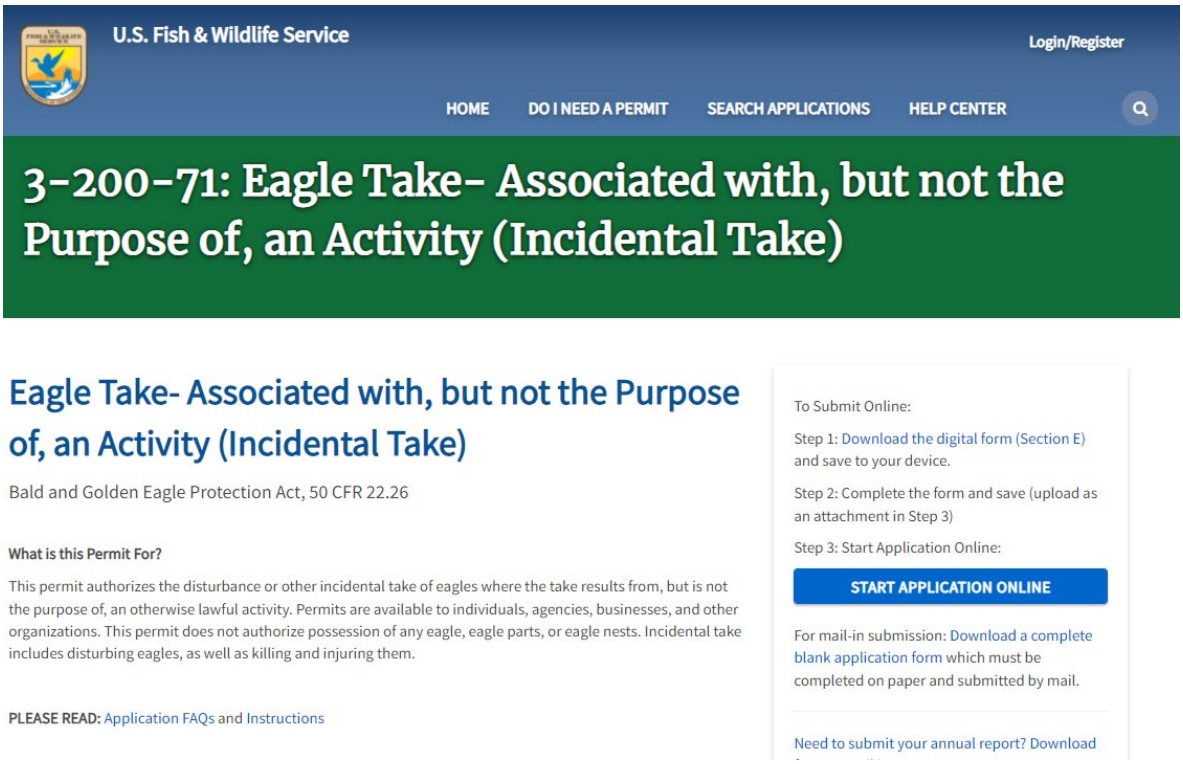
Please visit the Service's ePermits website at https://fwsepermits.servicenowservices.com/fws/ to create a user account before applying for a permit. Below is an image of the home page of the website.



Once FHWA/NDOT creates an account, search in ePermits for a permit application for Eagle Take Permit 3-700-1 Eagle Take – Associated With, But Not the Purpose of, the Activity. See image below for one way to conduct a search in ePermits:



The webpage for **Eagle Take Permit 3-700-1 Eagle Take – Associated With, But Not the Purpose of, the Activity**, is shown below. Please read the Application FAQs and Instructions before you start an application. To submit an application online, follow the steps on the upper right-hand corner of the page. To submit an application in the mail, download a copy of the application form to fill out, print, and submit via mail.



For assistance with ePermits, please email ePermits_support@fws.gov.

For questions about a permit application, please email the Service's Region 6 Migratory Bird Permit Office, located in Lakewood, Colorado, at permitsR6MB@fws.gov.

Due to the number of permit applications received, please anticipate **30 to 90 days for processing new applications and over 180 days to process renewal applications**. If you hold a valid, renewable permit you may continue the activities authorized by the expired permit until the Service acts on the application for renewal as long as you have requested renewal 30 days prior to the expiration date of your permit per 50 CFR 13.22.