

SPECIES-SPECIFIC GUIDANCE FOR ENDANGERED AND THREATENED ANIMAL SPECIES PERMITTING (NYS ECL ARTICLE 11, 6 NYCRR PART 182)



Species: Bald Eagle (*Haliaeetus leucocephalus*)

New York State Listing Status: *Threatened Species*

Federal Listing Status: Not listed under Endangered Species Act (ESA); protected under Federal Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, and Lacey Act.

Species information: The Bald Eagle is a large bird of prey easily identified in adult plumage by its white head and tail. Bald Eagles prefer undisturbed forested areas near large lakes and reservoirs, marshes and swamps, or stretches along rivers where they can find open water and their primary food, fish. However, they can also be found close to people and disturbed areas.

General species-specific background information can be found at the following links:

NYS DEC Bald Eagle fact sheet: www.dec.ny.gov/animals/74052.html

Conservation Plan for Bald Eagles in New York State:
www.dec.ny.gov/docs/wildlife_pdf/nybaldeagleplan.pdf

New York Natural Heritage Program Animal Guide: guides.nynhp.org/bald-eagle/

Threats and Concerns: Threats to Bald Eagles are factors that negatively influence Bald Eagle populations by causing displacement and/or mortality of individuals or by reducing survival or reproductive success.

Major threats include:

- Direct mortality of species from project activity or collisions (e.g., wind turbines);
- Habitat loss/alteration (e.g. construction of new buildings, roads, utilities, wind turbines, or other permanent structures).

Other threats include:

- Human activity/disturbance of breeding or wintering sites from recreational activities;
- Tree clearing and forestry activities;
- Aircraft and unmanned aerial vehicle use;
- Blasting, fireworks, or other extremely loud noises.

Concerns include:

- Loss of preferred nesting, foraging, or roosting sites;
- Nest failure, nest abandonment, or nesting territory abandonment;
- Impacts to movements between nests/winter roosts and foraging areas;
- Impacts to fledglings from wind turbines.

Occupied Habitat: *Occupied habitat* means a geographic area in New York within which a species listed as endangered or threatened has been determined by the Department to exhibit one or more essential behaviors. Essential behavior includes behaviors associated with breeding, hibernation, reproduction, foraging, sheltering, migration, and overwintering that are a part of its normal life cycle and that are essential to its survival and perpetuation.

A “yes” response or ‘hit’ for a species from the [DEC EAF Mapper](#) or New York Natural Heritage Program (NYNHP) response letter means your site may be considered occupied habitat. Occupied habitat can also be determined on a project-by-project basis by site-specific surveys that are conducted through the SEQRA (State Environmental Quality Review Act) process or other environmental review. The Department may recommend that species-specific surveys be conducted if suitable habitat is present (See **Surveys** section below).

Generally, projects occurring within 1 mile of a nest (breeding habitat) and 0.5 miles of a wintering area (also known as non-breeding habitat) require review by the Department to ensure that direct harm to individuals and negative impacts to occupied habitat do not occur. This is based on available species guidance related to the potential for some types of activities to disturb nests and wintering areas at this distance. Bald Eagles are migratory in nature and move long distances between habitats, which could expose them to impacts from a project beyond these distances. Impacting occupied habitat and harming animals directly is unlawful without appropriate permits from the Department and United States Fish and Wildlife Service (USFWS). Projects with greater potential for impacts (e.g., wind farms, other tall structures) may need review beyond 1 mile. See the ‘Threats and Concerns’ section above.

Occupied habitats for Bald Eagle are generally categorized into breeding and non-breeding habitat as described below:


Breeding habitat – Bald Eagles are known to breed throughout the state. Bald Eagles generally nest in forested areas near water and usually select tall trees large enough to support a nest. The nest is often maintained and reused each year. While breeding territories were historically concentrated along the Hudson River, the Upper Delaware River Watershed, Iroquois Refuge, and the Montezuma Wetlands Complex, many additional breeding locations have been documented throughout New York in recent years. A breeding territory is comprised of nesting and foraging areas and is focused on the active nest but also often includes alternate nests that are maintained but not used for nesting during a given year.

Wintering habitat (Non-breeding habitat) – In the late summer and fall, Bald Eagles typically begin migrating to their wintering areas. Eagle wintering areas are comprised of foraging, perching, and roosting sites. These locations provide open water for foraging, even when severe winter temperatures are experienced. The open water must be in close proximity to forest stands which provide sheltered roosts for the eagles during inclement weather. Areas which have been identified as important wintering areas in New York where significant numbers of eagles congregate include, but are not limited to, the Delaware River, St. Lawrence River, Hudson River, and Mongaup River systems, Allegheny River Reservoir, Lake Erie shoreline, and Lake Champlain shoreline. Similar to their breeding territories, Bald Eagles also exhibit a great deal of fidelity to their wintering areas.

Impact Avoidance and Minimization Measures: Impacts identified for Bald Eagles include, but are not limited to, adverse modification of occupied habitat from human development and tree removal, direct take of individuals from wind energy or other activities and impacts to essential behaviors from human activities and noise disturbance. If habitat

exists on or near a project site, individuals may be encountered on the project site, or indirect impacts to the species or its habitat may be likely. Many impacts to Bald Eagles can be avoided by conducting activities outside the nesting or wintering seasons and maintaining adequate space between the project activity and the eagle nest or wintering location. In New York, the nesting season runs from January 1st to September 30th and the wintering time frame runs from December 1st to March 31st. **See the table below for additional guidance on how to avoid or minimize impacts to Bald Eagles from some common project-related actions.**


Note: Wind energy activities are not included on the table below. Contact Division of Environmental Permits, Energy Project Management Office at 518-402-9167, deppermitting@dec.ny.gov, USFWS and Office of Renewable Energy Siting (ORES) <https://ores.ny.gov/form/contact-form> for more information and guidance on species studies and project siting. Part of the wind energy project review process includes assessment of the likelihood of direct take of Bald Eagles in conjunction with review by USFWS under the Bald Eagle and Golden Eagle Protection Act (16 U.S.C. 668-668c). Large-scale renewable energy projects greater than 25 megawatts in size fall under Executive Law 6-94-C and 19 NYCRR Part 900. Additional information on this process can be found on the New York State Office of Renewable Energy Siting webpage: <https://ores.ny.gov/>.



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Conservation Plan for Bald Eagles in New York State



NYSDEC Photo

Table 5. Recommended Buffers Based on Proposed Activity and Site Conditions to Prevent Disturbance			
Activity	Restriction Period	Condition/Season	Distance Recommendation *
New building, roadway or utility construction	Year-round	Nest with visual buffer	No closer than 660' from nest
		Nest without visual buffer	No closer than ¼ mile ** from nest
Boat ramp and/or marina construction	Year-round	With or without visual buffer	No closer than ¼ mile from important foraging areas
Logging	Varies seasonally	During breeding season (Jan 01-Sept 30)	No harvest within 660' from nest
		During wintering period (Dec 01-March 31)	No harvest within ¼ mile from important deep winter roosts
	Year-round		Avoid removal of overstory trees within 330' from nest
Motorized recreation	Varies seasonally	During breeding season (Jan 01-Sept 30)	No closer than 660' from nest
		During wintering period (Dec 01-March 31)	No closer than 660' from communal roosts
Non-motorized recreation	Varies seasonally	During breeding season (Jan 01-Sept 30)	No closer than 330' from nest with visual buffer or 660' without visual buffer
		During wintering period (Dec 01-March 31)	No closer than 330' from communal roosts with visual buffer or 660' feet without visual buffer
Airboats	Varies seasonally	During breeding season (Jan 01-Sept 30)	No closer than ¼ mile from nests
		During wintering period (Dec 01-March 31)	No closer than ¼ mile from important deep winter roost sites
Aircraft, Unmanned Aerial Vehicles (drones)	Varies seasonally	During breeding season (Jan 1-Sept 30)	¼ mi or 1500' above ground level at nest
		During wintering period (Dec 01-March 31)	¼ mi or 1500' above ground level at communal roost sites
Blasting, Fireworks and other loud noises	Varies seasonally	During breeding season (Jan 01-Sept 30) With visual buffer	No closer than ¼ mile from nest
		W/out visual buffer	No closer than 1 mile from nest
		During wintering period (Dec 1-March 31) With buffer	No closer than ½ mile from communal roost and foraging sites
		W/out visual buffer	No closer than 1 mile from communal roost and foraging sites

*may vary based on landscape characteristics and type of activity
**¼ mile = 1320'

Table 5 is taken from the [Conservation Plan for Bald Eagles in NYS](#).

Surveys: Surveys may not be needed if it has already been determined that occupied habitat exists on the project site. In some cases, surveys may help clarify habitat use by Bald Eagle and identify any potential negative impacts to the species that can be avoided or minimized by project modifications. Contact your [Regional Division of Environmental Permits Office](#) to determine if any species surveys are required or appropriate before conducting surveys. The methods of any proposed study should be approved by the Department before the study or survey is undertaken to ensure it is appropriate and adequate to address your project's needs. Possible surveys could include, but not be limited to, the following:

- Point counts
- Migration surveys
- Aerial nest surveys
- Telemetry studies
- Monitoring nest activity
- Surveying for winter roost locations.

A License to Collect or Possess endangered and threatened species may be required for some survey efforts. Please see [Endangered/Threatened Species Special Licensing](#).

Mitigation: If a proposed project will not fully avoid all adverse impacts to Bald Eagle and its habitat, as determined by the Department, a permit from DEC under Part 182 will be required. Applications for incidental take permits are handled by [Regional Division of Environmental Permits](#) offices. To be eligible for a permit, the project sponsor must mitigate (offset) all adverse impacts and be able to demonstrate a *Net Conservation Benefit* (NCB)* to the species.

*NCB means a successful enhancement of the species' subject population, successful enhancement of the species' overall population, or a contribution to the recovery of the species within New York. To be classified as a NCB, the enhancement or contribution must benefit the affected species listed as endangered or threatened or its habitat to a greater degree than if the applicant's proposed activity were not undertaken. Mitigation actions to achieve NCB should be based primarily on the expected adverse impacts of the applicant's proposed activity and must be determined through consultation with the Department.

Federal Review and Permitting: Bald Eagles and their nests are federally protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. For information related to federal protection and potential permitting requirements for the Bald Eagle, contact the United States Fish and Wildlife Service Migratory Bird Permit office located in Hadley, Massachusetts at 413-253-8200.

What To Do Next: If you have questions about permitting or would like a jurisdictional determination for your project, please contact your [Regional Division of Environmental Permits Office](#).

If you have additional questions about Bald Eagles, please reach out to your [Regional Wildlife Office](#).

Date: February 16, 2022

Disclaimer: This document provides general guidance and information about ETS and project review and is not meant to substitute for a full review and Jurisdictional Determination by the Department. If you have additional questions about your project, please contact the regional Division of Environmental Permits office.