

Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–MB–2016–N160; FF08M00000–FXMB12310800000–167]

Golden Eagles; Programmatic Take Permit Decision; Finding of No Significant Impact for Final Environmental Assessment; Alta East Wind Project, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a Finding of No Significant Impact (FONSI) for the final Environmental Assessment (FEA) under the National Environmental Policy Act (NEPA) for the issuance of a take permit for golden eagles pursuant to the Bald and Golden Eagle Protection Act (Eagle Act), in association with the operation of the Alta East Wind Project (Alta East) in Kern County, California. The FEA was prepared in response to an application from Alta Wind X, LLC (applicant), an affiliate of NRG Yield, Inc., for a 5-year programmatic take permit for golden eagles (*Aquila chrysaetos*) under the Eagle Act. The applicant will implement a conservation program to avoid, minimize, and compensate for the project's impacts to eagles, as described in the applicant's Eagle Conservation Plan (ECP). We solicited comments on the draft Environmental Assessment (Draft EA) and have

reviewed those comments in the course of preparing our findings for this project. Based on the FEA, the Service concludes that a Finding of No Significant Impact (FONSI) is appropriate. Based on the FONSI and findings we prepared associated with the permit application, we intend to issue the permit after 30 days.

ADDRESSES: *Obtaining Documents:* You may download copies of the FONSI, FEA, our Response to Comments on the Draft EA and the Final ECP for the Alta East Wind Project on the Internet at:

<http://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html>. Alternatively, you may use one of the methods below to request a CD-ROM of the document.

- *Email:* fw8_eagle_nepa@fws.gov. Include “Alta East Eagle Permit draft EA Comments” in the subject line of the message.
- *U.S. Mail:* Heather Beeler, Migratory Bird Program, U.S. Fish and Wildlife Service, Pacific Southwest Regional Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *Fax:* Heather Beeler, Migratory Bird Program, 916-414-6486; Attn: Alta East Wind Project DEA Comments.

FOR FURTHER INFORMATION CONTACT: Heather Beeler, Migratory Bird Program, at the address shown in **ADDRESSES** or at (916) 414-6651 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service, evaluated an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d; Eagle Act) for a 5-year programmatic golden eagle (*Aquila chrysaetos*) take permit from the Alta Wind X, LLC (applicant), affiliate of NRG Yield, Inc. The applicant’s Alta East Wind Project is an existing, operational wind facility in the Tehachapi Wind Resource Area (WRA) within Kern County, California. The application includes an Eagle Conservation Plan (ECP) as the foundation of the applicant’s permit application. The ECP and the project’s Bird and Bat Conservation Strategy describe actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles, birds, and bats.

We prepared the FEA and FONSI to evaluate the impacts to the human environment of several alternatives associated with this permit application and evaluated compliance with our Eagle Act permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26, as well as impacts of implementation of the supporting ECP, which was included as an appendix to the DEA. The applicant has revised the ECP, and the Final ECP is an attachment to our FONSI (Attachment 3).

Public Comments on the Draft Environmental Assessment (EA)

We invited public comment on the Draft EA. In response, we received ten submissions; two submissions from Native American tribes, three from nongovernmental organizations (NGOs), three from the public, one from the electric utility industry and one from the applicant. One of the NGO comment letter combined comments from three different environmental organizations. Our responses to the comments on the Draft EA are presented in Attachment 2 of the FONSI.

In total, the comment letters contained approximately 36 individual comments. These comments generally fell under one of five main categories: (1) effects to the species (including number of fatalities, local and cumulative effects, other sources of fatalities, and overall population numbers); (2) advanced conservation practices (ACPs), Technical Advisory Committee (TAC) role, transparency of the process and future ACPs, project siting, and curtailment); (3) mitigation (addressing scientific basis for electric utility retrofits and location of retrofits); (4) monitoring and reporting (addressing project reporting and Tehachapi Wind Resource Area eagle mortality reporting); and (5) general comments about the permitting program (including comments opposing the issuance of an eagle take permit).

Overall, the comments raised issues regarding the opportunities and challenges associated with issuing eagle take permits. We made changes to three topic areas of the FEA based on these comments. First, we added information on our risk evaluation under the curtailment program. We added more detailed information on the science behind the electric utility pole retrofit process for mitigation. We also expanded our discussion about our National Fish and Wildlife Foundation (NFWF) Eagle Mitigation Account.

We made some additional minor changes to the final EA to improve clarity. After considering all the comments, and in light of the record, we determined that neither substantial revisions nor a new analysis are required for the FEA. Detailed responses to specific comments are included in the FONSI (Attachment 2).

Background

The Eagle Act allows us to authorize bald eagle and golden eagle programmatic

take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. The Eagle Act's implementing regulations define "take" as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb" individuals, their nests and eggs (50 CFR 22.3); and "disturb" is further defined as "to agitate or bother a bald or golden eagle to a degree that causes ... (1) injury to an eagle, ... (2) a decrease in its productivity, ... or (3) nest abandonment" (50 CFR 22.3). The Alta East Wind Project will result in recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

We may consider issuance of programmatic eagle take permits if (1) the incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act—providing for stable or increasing breeding populations; (3) the take has been avoided and minimized to the degree achievable through implementation of Advanced Conservation Practices, and the remaining take is unavoidable; and (4) compensatory mitigation will be provided for any remaining take. The Service must determine that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Decision

The Service's Selected Alternative for our issuance of a programmatic eagle take permit to Alta East contains elements of Alternatives 3, 4 and 5 of the EA. Under the

Selected Alternative described in our FONSI, we will issue a 5-year programmatic eagle take permit to Alta X Wind, LLC for take of up to 3 golden eagles requiring implementation of the ECP, curtailment when eagles are detected and additional monitoring and mitigation. The Service has determined that a Finding of No Significant Impact (FONSI) is appropriate for this action. Based on the FONSI and findings prepared associated with the permit application, we intend to issue a permit after 30 days.

Authority

We provide this notice under Section 668a of the Eagle Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: October 14, 2016_____

Alexandra Pitts,
Deputy Regional Director,
Pacific Southwest,
Sacramento, California.

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