CHAPTER 9. PLAN IMPLEMENTATION

9.1 INTRODUCTION

This chapter describes the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MWE) implementation structure and responsibilities; eligibility requirements for project proponents to receive take authorizations under the MWE; the take authorization application and issuance process; mitigation procedures; the process for tracking take and implementation of mitigation; and compliance reporting requirements.

9.2 IMPLEMENTATION STRUCTURE

The MWE will be implemented by the U.S. Fish and Wildlife Service (USFWS) and the Administrative Implementing Entity (AIE) as the Master Permittee. The MWE also provides for the establishment of a Mitigation Implementing Entity (MIE) by the AIE. The MIE may be used by Certificate of Inclusion (COI)-holders or contracted by individual Permittees to implement their mitigation obligations.

The MWE implementation structure is illustrated in Figure 9-1. The implementation responsibilities of the USFWS, AIE, and MIE are described in the following subsections.

Figure 9-1. MWE Implementation Structure
9.2.1 U.S. Fish and Wildlife Service

The USFWS will be responsible for processing the AIE’s application for a Master Permit, processing individual Incidental Take Permit (ITP) applications, and ensuring compliance of individual Permittees and the Master Permittee with the terms and conditions of the MWE and ITPs. These responsibilities include, but are not limited to, those described in Table 9-1.

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>MWE Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providing technical assistance to project proponents with preparation of</td>
<td>Sections 9.4.1 and 9.4.2</td>
</tr>
<tr>
<td>ITP and COI applications</td>
<td></td>
</tr>
<tr>
<td>Reviewing ITP applications for consistency with the MWE and</td>
<td>Section 9.4.1.3</td>
</tr>
<tr>
<td>programmatic NEPA and section 7 analyses</td>
<td></td>
</tr>
<tr>
<td>Issuing a Master Permit and individual ITPs</td>
<td>Section 9.2.1</td>
</tr>
<tr>
<td>Reviewing AIE COI requests and providing notice of an objection or</td>
<td>Section 9.4.2.3</td>
</tr>
<tr>
<td>non-objection to a COI application to the AIE</td>
<td></td>
</tr>
<tr>
<td>Reviewing and approving proposed mitigation site acquisitions and</td>
<td>Sections 9.7.2.1 and 9.7.2.2</td>
</tr>
<tr>
<td>Mitigation Site Plans</td>
<td></td>
</tr>
<tr>
<td>Reviewing AIE Annual Work Plans and Budgets</td>
<td>Section 9.5</td>
</tr>
<tr>
<td>Reviewing and evaluating Annual Compliance Reports to confirm</td>
<td>Section 9.10.1.</td>
</tr>
<tr>
<td>compliance with the MWE and take authorizations</td>
<td></td>
</tr>
<tr>
<td>Tracking the level of take issued to wind energy facilities</td>
<td>Section 9.8</td>
</tr>
<tr>
<td>Tracking implemented mitigation relative to mitigation schedules</td>
<td>Sections 9.7.1</td>
</tr>
<tr>
<td>Tracking take and mitigation</td>
<td>Sections 9.8 and 9.9</td>
</tr>
<tr>
<td>Tracking documented fatalities of Covered Species and other native</td>
<td>Sections 9.8 and 9.10.2</td>
</tr>
<tr>
<td>wildlife species</td>
<td></td>
</tr>
<tr>
<td>Tracking compliance with funding assurances requirements</td>
<td>Sections 8.2.1.3, 8.2.2, 8.2.3.5, and 9.4.1,</td>
</tr>
<tr>
<td>Enforcement of the provisions of the Master Permit and ITPs</td>
<td>Section 8.7 and 9.11</td>
</tr>
<tr>
<td>Reviewing and evaluating notifications by individual Permittees and the</td>
<td>Sections 8.3, 8.4, and 9.10.3</td>
</tr>
<tr>
<td>AIE of changed and unforeseen circumstances</td>
<td></td>
</tr>
<tr>
<td>Reviewing individual Permittee, MIE, and COI-holder changed</td>
<td>Section 8.4.2</td>
</tr>
<tr>
<td>circumstances Event Evaluations and authorizing implementation of</td>
<td></td>
</tr>
<tr>
<td>planned responses</td>
<td></td>
</tr>
<tr>
<td>Initiating requests and responding to requests by individual Permittees and</td>
<td>Section 8.6</td>
</tr>
<tr>
<td>the AIE for minor and major amendments</td>
<td></td>
</tr>
<tr>
<td>Responding to requests for ITP renewals</td>
<td>Section 8.5</td>
</tr>
<tr>
<td>Notifying the AIE of the amount of take authorized under individual ITPs</td>
<td>Section 9.2.2</td>
</tr>
<tr>
<td>as part of the AIE’s tracking of the take available for allocation under COIs</td>
<td></td>
</tr>
<tr>
<td>Coordinating mitigation-related activities with the MIE over the term of the</td>
<td>Sections 9.2.3 and 9.7.2.1</td>
</tr>
<tr>
<td>MWE as needed</td>
<td></td>
</tr>
<tr>
<td>Conferring with individual Permittees in the event of any noncompliance</td>
<td>Sections 9.10.4 and 9.10.5</td>
</tr>
<tr>
<td>identified by an individual Permittee or the USFWS and approving actions that</td>
<td></td>
</tr>
<tr>
<td>will be undertaken to become compliant</td>
<td></td>
</tr>
<tr>
<td>Conferring with the AIE in the event of any noncompliance of a COI-</td>
<td>Sections 9.10.4 and 9.10.5</td>
</tr>
<tr>
<td>holder identified by the AIE or the USFWS and approving actions that will be</td>
<td></td>
</tr>
<tr>
<td>undertaken to become compliant</td>
<td></td>
</tr>
</tbody>
</table>
Responsibility | MWE Section Reference
---|---
Conferring with the AIE and individual Permittees over the term of the MWE as needed | Not applicable
Coordinating with state wildlife agencies over the term of the MWE as needed | Not applicable


It is anticipated that the USFWS will establish a MWE Coordinator position in its Region 3 Office located in Bloomington, MN. The funding for the MWE Coordinator will be provided by the AIE through a Service Reimbursable Agreement with the USFWS (see Section 8.2.1.1). Individual Permittees will pay a MWE Coordinator fee to the AIE for their share of the MWE Coordinator position service costs as described in Section 8.2.1.2.3. The MWE Coordinator will be directly responsible for coordinating the USFWS’s Plan Area-wide implementation of the MWE with project proponents applying for a take authorization, individual Permittees, the AIE, COI-holders, the MIE, and USFWS Plan Area Field Offices.

### 9.2.2 Administrative Implementing Entity (Master Permittee)

Under the MWE Master Permittee structure (see Section 1.4), wind energy companies that participated in the development of the MWE intend to establish an AIE to serve as the Master Permittee. When established, the AIE may submit its ITP application for a Master Permit to the USFWS. It is anticipated that the AIE will be established prior to the MWE becoming effective (see Section 1.5), although the AIE may submit its ITP application at any time during the first 15 years of MWE implementation (i.e., the MWE enrollment period for proposed wind energy facilities). The responsibilities of a MWE Master Permittee include, but are not limited to, those described in Table 9-2. The bylaws governing the AIE’s structure, financing, operations, and responsibilities of the AIE must be submitted to the USFWS for review with or prior to the AIE’s submittal of its application for a Master Permit. The following provides a summary description of the AIE as currently proposed by the participating wind energy companies.

The AIE will be established as a corporation and will be the entity to which the Master Permit is issued. The AIE will be comprised of a five-person Board. Three members of the Board will be held by representatives from wind energy companies and two members will be representatives of conservation and other interests that have experience with wind energy conservation-related issues. All members must have familiarity with the wind energy industry in the Plan Area and the Endangered Species Act (ESA). Upon establishment, the Board’s chair will serve for an initial period of 3 years, two members will serve for 2 years, and two members will serve for 1 year. Thereafter, Board members will serve staggered 3 year terms. As terms expire, the Board will be responsible for designating replacement members. The Board’s primary responsibility will be fiduciary including, but not limited to, managing Board expenditures; ensuring an adequate funding stream is maintained to support all AIE functions; periodically reviewing COI Application, Permit Administration, MWE Coordinator, and Service Fees (see Section 8.2.1.2), and approving adjustments in fees; and participating in the resolution of any disputes regarding
the issuance and enforcement of COIs that may arise among the Board, COI-holders, and the USFWS. At a minimum, the Board will meet annually to review finances and audits. The Board may choose to meet more frequently as needed over the term of the MWE.

It is anticipated that the AIE structure will include the establishment of an Executive Director responsible for the day to day AIE administrative and MWE implementation functions (see Table 9-2). In addition, the Executive Director will be responsible for contracting technical services (e.g., legal, biological, Geographic Information System [GIS], financial) as needed over the term of the Master Permit. It is expected that the degree of technical expertise required will fluctuate over the term of the Master Permit\(^1\). Funding sources and assurances for the AIE are described in Section 8.2.1.

The USFWS will issue an ITP to the AIE as the Master Permittee if it (1) finds that the ITP application meets the applicable general and specific permit issuance criteria (see Section 1.8.1), (2) finds that the ITP application is consistent with the requirements of the MWE National Environmental Policy Act (NEPA) Record of Decision, the ESA biological opinion, and all other associated decision documents, and (3) finds that the bylaws of the AIE are sufficient to provide for effective discharge all of the responsibilities described in Table 9-2 and provide for sufficient representation on the AIE Board from outside the wind energy industry.

As the Master Permittee, the AIE must maintain compliance with the applicable requirements of the MWE and the Master Permit. The AIE is also responsible for enforcing each COI-holder’s compliance with the applicable requirements of the MWE, the MWE, its COI, and its Participation Agreement (see Section 9.11). The Participation Agreement will have a choice of law provision in which a particular state will be identified for all participants. The state selected must have the concurrence of the USFWS. The AIE’s enforcement, as the Master Permittee, of COI-holder compliance with the its obligations will be through the contract law for the selected state.

\(^1\) For example, the requirements for technical expertise are expected to be greater during the COI enrollment period (i.e., the first 15 years of MWE implementation) to address COI application consistency reviews (see Section 9.4.2).
## Table 9-2. AIE MWE Implementation Responsibilities

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>MWE Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conducting periodic AIE Board meetings, travel, and operations</td>
<td>Section 9.2.2</td>
</tr>
<tr>
<td>Hiring and management of AIE staff</td>
<td>Section 9.2.2</td>
</tr>
<tr>
<td>Collecting COI Request and Permit Administration Fees from project</td>
<td>Sections 8.2.1.2 and 9.4.2</td>
</tr>
<tr>
<td>proponents requesting a COI and COI-holders</td>
<td></td>
</tr>
<tr>
<td>Collecting MWE Coordinator and Service Fees from individual Permittees</td>
<td>Section 8.2.1.2.3</td>
</tr>
<tr>
<td>Signing Participation Agreements with and granting COIs</td>
<td>Section 9.4.2</td>
</tr>
<tr>
<td>Tracking COI-holder implemented mitigation and COI mitigation implemented</td>
<td>Section 9.7.1</td>
</tr>
<tr>
<td>by the MIE relative to mitigation schedules</td>
<td></td>
</tr>
<tr>
<td>Tracking allocation of take among COI participants. The USFWS will notify</td>
<td>Section 9.8</td>
</tr>
<tr>
<td>the Master Permittee of the amount of take that has been allocated to</td>
<td></td>
</tr>
<tr>
<td>individual Permittees within 2 business days of issuing an ITP.</td>
<td></td>
</tr>
<tr>
<td>Tracking COI-holder compliance with funding assurances requirements</td>
<td>Sections 8.2.2, 8.2.3.4, and 9.4.2,</td>
</tr>
<tr>
<td>Enforcement of the provisions of COIs and COI Participation Agreements</td>
<td>Section 9.11</td>
</tr>
<tr>
<td>Enforcement of the provisions of the AIE’s contract with the MIE</td>
<td>Section 9.2.3</td>
</tr>
<tr>
<td>Contracting with and oversight of AIE consultants</td>
<td>Section 9.2.2</td>
</tr>
<tr>
<td>Conducting periodic review of and adjustments to AIE COI Request Permit</td>
<td>Section 8.2.1.2.2</td>
</tr>
<tr>
<td>Administration Fees, and MWE Coordinator and Service Fees</td>
<td></td>
</tr>
<tr>
<td>Maintaining a GIS database of the location of all wind energy facilities that</td>
<td>Not applicable</td>
</tr>
<tr>
<td>have been issued a COI</td>
<td></td>
</tr>
<tr>
<td>Preparing and submitting Annual Work Plans and Budgets to the USFWS and</td>
<td>Section 9.5.2</td>
</tr>
<tr>
<td>COI-holders</td>
<td></td>
</tr>
<tr>
<td>Providing AIE funding assurances to the USFWS in accordance with the funding</td>
<td>Section 8.2.1.3</td>
</tr>
<tr>
<td>assurances schedule</td>
<td></td>
</tr>
<tr>
<td>Receiving and monitoring COI-holder mitigation funding assurances</td>
<td>Section 8.2.3.5.3</td>
</tr>
<tr>
<td>Reviewing and approving MIE Annual Work Plans and Budgets</td>
<td>Section 9.5.1</td>
</tr>
<tr>
<td>Providing COI requests and results of the AIE’s request review to the USFWS</td>
<td>Section 9.4.2.3</td>
</tr>
<tr>
<td>for its consistency review</td>
<td></td>
</tr>
<tr>
<td>Reviewing MIE and COI-holder Annual Compliance Reports to document compliance</td>
<td>Section 9.10.1</td>
</tr>
<tr>
<td>with terms of the COI and any applicable adaptive management requirements</td>
<td></td>
</tr>
<tr>
<td>Preparing and submitting the AIE Annual Compliance Report to the USFWS</td>
<td>Section 9.10.1</td>
</tr>
<tr>
<td>Reviewing MIE COI-holder- related and COI-holder changed circumstances Event</td>
<td>Section 8.4.2 and 9.10.3</td>
</tr>
<tr>
<td>Evaluations</td>
<td></td>
</tr>
<tr>
<td>Reviewing and approving adjustments to MIE mitigation fees</td>
<td>Section 8.2.3.2.2</td>
</tr>
<tr>
<td>Enforcing COI-holder compliance with provisions of Participation Agreements</td>
<td>Sections 8.7 and 9.11</td>
</tr>
<tr>
<td>and COIs and suspending or revoking COIs</td>
<td></td>
</tr>
<tr>
<td>Notifying the MIE and COI-holders implementing mitigation of a determination</td>
<td>Section 8.4.2</td>
</tr>
<tr>
<td>by the USFWS that a planned response must be implemented in COI-holder</td>
<td></td>
</tr>
<tr>
<td>mitigation sites to address a changed circumstance</td>
<td></td>
</tr>
<tr>
<td>Coordinating mitigation-related activities with the MIE over the term of the</td>
<td>Not applicable</td>
</tr>
<tr>
<td>MWE as needed</td>
<td></td>
</tr>
<tr>
<td>Notifying the USFWS of any instances of noncompliance by a COI-holder with</td>
<td>Section 9.11</td>
</tr>
<tr>
<td>the terms of its COI or the MWE</td>
<td></td>
</tr>
<tr>
<td>Initiating and responding to requests for minor and major amendments to the</td>
<td>Section 8.6</td>
</tr>
<tr>
<td>MWE and the Master Permit</td>
<td></td>
</tr>
<tr>
<td>Conducting comprehensive MWE implementation reviews</td>
<td>Section 9.12</td>
</tr>
</tbody>
</table>

9.2.3 Mitigation Implementing Entity

If established, the MIE will be contractually responsible to the AIE for implementing all off-site mitigation requirements for COI-holders that choose to implement their mitigation through the MIE. Individual Permittees that wish to use the MIE will enter into separate contracts directly with the MIE to implement mitigation on their behalf. The MIE may be a profit or a not-for-profit entity. The AIE’s contract with the MIE will include provisions approved by the USFWS for remedying any failure of the MIE to fulfill its mitigation responsibilities, including termination of the MIE. Should the MIE not meet its contract obligations and the contract remedies prove inadequate to address the failure, the applicable individual Permittees and the AIE on behalf of applicable COI-holders will be responsible for implementing any shortfall in mitigation requirements resulting from the failure. Termination of the MIE over the term of the MWE will trigger the changed circumstance described in Section 8.4.2.6. The responsibilities of the MIE include, but are not limited to, those described in Table 9-3.

Table 9-3. MIE MWE Mitigation Responsibilities

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>MWE Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishing and collecting MIE mitigation fees from COI-holders</td>
<td>Section 8.2.3.2</td>
</tr>
<tr>
<td>Entering into contracts with individual Permittees to implement mitigation on</td>
<td>Section 9.7</td>
</tr>
<tr>
<td>their behalf</td>
<td></td>
</tr>
<tr>
<td>Periodically reviewing and making adjustments to mitigation fees</td>
<td>Section 8.2.3.2.2</td>
</tr>
<tr>
<td>Preparing and submitting Annual Work Plans and Budgets to the AIE</td>
<td>Section 9.5.1</td>
</tr>
<tr>
<td>Identifying and acquiring mitigation sites</td>
<td>Section 9.7.2.1</td>
</tr>
<tr>
<td>Implementing habitat restoration activities and managing and maintaining</td>
<td>Sections 5.2.3, 5.3.3,</td>
</tr>
<tr>
<td>mitigation sites</td>
<td>and 5.4.3</td>
</tr>
<tr>
<td>Tracking mitigation sites and expenditures</td>
<td>Sections 9.5.1 and 9.10.1</td>
</tr>
<tr>
<td>Implementing monitoring requirements in MIE mitigation sites</td>
<td>Section 7.4</td>
</tr>
<tr>
<td>Transferring mitigation land and conservation easements to a third party that</td>
<td>Sections 9.7.2.4 and</td>
</tr>
<tr>
<td>assumes the responsibilities of the MIE with concurrence of the USFWS</td>
<td>9.7.3</td>
</tr>
<tr>
<td>Monitoring and enforcing the terms and conditions of mitigation site</td>
<td>Section 9.7.2.4</td>
</tr>
<tr>
<td>conservation easements</td>
<td></td>
</tr>
<tr>
<td>Preparing Mitigation Site Plans for submittal to the USFWS</td>
<td>Section 9.7.2.1</td>
</tr>
<tr>
<td>Conducting and preparing mitigation baseline survey reports</td>
<td>Sections 5.2, 5.3, and 5.4</td>
</tr>
<tr>
<td>Providing environmental compliance and permitting for habitat restoration</td>
<td>Section 8.2.3.2</td>
</tr>
<tr>
<td>mitigation projects (e.g., section 404 of the Clean Water Act)</td>
<td></td>
</tr>
<tr>
<td>Developing and managing a mitigation site tracking, monitoring, and management</td>
<td>Not applicable</td>
</tr>
<tr>
<td>database</td>
<td></td>
</tr>
<tr>
<td>Participating in periodic reviews of MWE procedures with the USFWS, AIE,</td>
<td>Section 9.12</td>
</tr>
<tr>
<td>and individual Permittees</td>
<td></td>
</tr>
<tr>
<td>Monitoring for and preparing Event Evaluations to document occurrences of</td>
<td>Sections 7.4.1.4 and 8.4.2</td>
</tr>
<tr>
<td>changed circumstances in MIE mitigation sites</td>
<td></td>
</tr>
<tr>
<td>Implementing approved planned responses to changed circumstances</td>
<td>Section 8.4.2</td>
</tr>
</tbody>
</table>
### 9.3 Eligibility Standards

This section describes the eligibility requirements for project proponents seeking take authorization for new and existing wind energy facilities under the MWE. Compliance with these MWE eligibility requirements and conditions does not absolve project proponents from compliance with all other applicable laws and regulations (e.g., see Section 1.8).

#### 9.3.1 Proposed Wind Energy Facilities

Proposed wind energy facilities are only eligible to apply for an individual ITP or request a COI during the first 15 years of MWE implementation (see Section 1.5) to receive a take authorization for up to 30 years. A proposed wind energy facility is defined as any wind energy facility that does not meet the definition of an existing facility under Section 9.3.2 and is under development. If a wind facility is under development before the MWE has become effective and intends to enroll in the MWE, the project proponent must submit a letter of intent to the USFWS stating the intent to enroll in the MWE at the time it becomes effective and must be able to demonstrate that it has incorporated all of the MWE avoidance and minimization measures (AMMs) and best management practices (BMPs) into its site design. The planned future phases of an existing wind energy facility are considered proposed wind energy facilities and are subject to all MWE provisions that apply to proposed wind energy facilities.

For proposed wind energy facilities to be eligible to apply for and receive take authorization under the MWE, all of the following eligibility requirements and conditions must be met.

- The proposed wind energy facility must be a utility-scale commercial multi-turbine facility located within the Covered Lands indicated in Figure 1-4.
- The actions to be undertaken by the proposed wind energy facility must be defined as Covered Activities in Chapter 2.
- No clearing of occupied Covered Species habitat shall have occurred and no turbines shall have been erected prior to receipt of the take authorization.
• The proposed wind energy facility must request take of all covered species that have been determined to be at risk of take at the facility.

• The project proponent must agree to implement all applicable MWE requirements (e.g., AMMs, mitigation, monitoring).

• The project proponent must agree to meet all applicable MWE funding assurances requirements.

The process for requesting coverage for new wind energy facilities is described in Sections 9.4.1.1 and 9.4.2.1. Take authorizations for the Covered Species will be allocated for proposed wind energy facilities as described in Section 9.4.4.

9.3.2 Existing Wind Energy Facilities

Existing wind energy facilities are only eligible to enroll in the MWE and obtain a take authorization only during the first 5 years of MWE implementation (see Section 1.5). The USFWS may extend the eligibility period at the end of 5 years through a minor amendment pursuant to Section 8.6.2.1, but may not extend the eligibility period beyond the first 15 years of MWE implementation. The number of eligible existing Plan Area wind energy facilities that can participate in the MWE in not limited. An existing wind energy facility is defined as a facility with a Commercial Operation Date (i.e. the date the facility is fully commissioned and begins generating power to the electrical transmission grid) and is operating or proposes to operate such that there is the potential for incidental take of a Covered Species.

Qualifying existing wind energy facilities are eligible to apply for and receive a take authorization only if the project proponent complies with all of the following requirements and conditions.

• The existing wind energy facility must be a commercial multi-turbine facility located within the Covered Lands indicated in Figure 1-4.

• The actions to be undertaken by the proposed wind energy facility must be defined as Covered Activities in Chapter 2.

• To estimate the level of take to be requested in the ITP application or COI request, project proponents must conduct the Covered Species surveys or provide sufficient existing survey information approved by the USFWS that has been collected from the vicinity of the facility as described in Section 5.1.2.

• The project proponents must agree to implement all applicable MWE requirements, including AMMs, mitigation, and monitoring requirements described in Chapters 5 and 7.

• The project proponent must agree to meet all applicable MWE funding assurances requirements.
The process for existing wind energy facilities to receive a take authorization is described in Sections 9.4.1.2 and 9.4.2.2. Take authorizations for the Covered Species will be allocated for existing wind energy facilities as described in Section 9.4.4.

**9.3.3 Wind Energy Facilities Operating under an Existing Habitat Conservation Plan and Incidental Take Permit**

Existing wind energy facilities that operate under an existing ITP supported by an approved Habitat Conservation Plan (HCP) may apply for and receive separate MWE take authorization for Covered Species that are not included in the facility’s existing ITP. To be eligible, the project proponent must comply with same requirements and conditions described in Section 9.3.2 for existing wind energy facilities that do not operate under an existing ITP/HCP.

To receive a MWE take authorization, the project proponent must continue complying with the terms and conditions of the existing ITP, including those that pertain to a MWE Covered Species, and must demonstrate consistency with MWE biological opinion and take authorization for the Covered Species that are not covered under the existing ITP for which coverage is being sought under the MWE. The Covered Activities must also be consistent with the MWE. Future mitigation for species covered under the existing ITP will be credited as mitigation for the species covered under the MWE take authorization only if the mitigation satisfies all of the MWE mitigation requirements for the Covered Species for which take is authorized. The process for existing wind energy facilities operating under existing HCPs to receive a separate take authorization under the MWE is described in Sections 9.4.1.2 and 9.4.2.2.

**9.4 PROCESS FOR MWE IMPLEMENTATION**

A take authorization will be issued to a project proponent once the USFWS has determined the ITP application is compliant with the requirements of the MWE or when the USFWS has reviewed and not objected to the AIE’s consistency review of COI applications. Following issuance of a take authorization, the individual Permittee/COI-holder may take the applicable Covered Species under the ESA section 10(a)(1)(B). Take associated with implementation of mitigation activities will be avoided and only individuals that have been issued applicable section 10(a)(1)(A) permits or are acting under the direction of the permittee will implement monitoring activities that could result in take (e.g., mist netting of federally listed bat species). The following sections describe the steps that must be taken by project proponents to receive take authorizations.

**9.4.1 Individual Take Permits**

Project proponents must coordinate preparation of ITP applications with the USFWS to ensure that surveys and analyses necessary to prepare “Facility-Specific Plans” (see Section 9.4.1.1) will meet MWE requirements. An individual ITP must request coverage for all Covered Species that could be taken by the wind energy facility, except as described in Section 9.3.3. Regardless
of the results of the facility’s take assessment, proposed and existing wind energy facilities that are located in the states indicated in Table 9-4 are assumed to have the potential for take of interior least tern and/or piping plover and therefore must be included in the request for coverage.

<table>
<thead>
<tr>
<th>Covered Species</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior least tern</td>
<td>Iowa, Missouri</td>
</tr>
<tr>
<td>Piping plover, Great Lakes Population</td>
<td>Ohio, Indiana, Illinois, Wisconsin, Michigan</td>
</tr>
<tr>
<td>Piping plover, Great Plains Population</td>
<td>Plan Area-wide</td>
</tr>
</tbody>
</table>

Table 9-4. States in Which Wind Energy Facilities are assumed to Have the Potential for Take of Interior Least Tern and Piping Plover

States in which take authorization is required for these Covered Species is based on the states within their breeding range or through which they could migrate.

9.4.1.1 Proposed Wind Energy Facilities

ITP application procedures for proposed wind energy facilities include the following.

1. The project proponent notifies the USFWS of its intent to apply for an ITP. The USFWS provides the project proponent with the ITP application requirements and preparation guidance, including NEPA consistency requirements.²

2. The project proponent conducts all pre-construction surveys that are applicable to the Covered Species for which take authorization is being requested (see Section 5.1.2). Project proponents should coordinate with the USFWS to determine the applicable MWE survey requirements and acceptable survey methods. Survey methods guidance is provided in Appendix G.

3. In coordination with the USFWS, the project proponent prepares a Facility-Specific Plan containing the following information in conformance with the requirements of the MWE. Project proponents must coordinate with the USFWS to prepare the Facility-Specific Plan.

- A description of the Covered Activities, including the megawatt (MW) capacity; the proposed facility location and boundary map; and a description of and GIS data layer (accurate to within 3 meters [m]) showing the number, type, and proposed locations of wind turbines, buildings, operational facilities, roads, supporting infrastructure, and any other appurtenant facilities.

- A list of the Covered Species for which coverage is required (i.e., Covered Species for which there is a potential for take).

- A description and results of Covered Species surveys and habitat assessments conducted in accordance with the survey requirements in Section 5.1.2.

² These requirements are described in the MWE Programmatic Environmental Impact Statement.
• The methods and results of a take analysis (1) documenting the acreage of each Covered Species habitat that will be removed by facility construction and (2) documenting the estimated level of annual and cumulative operations-related take of each Covered Species over the requested term of the ITP. Project proponents must coordinate with the USFWS to prepare the take analysis.
  o The requested operations-related levels of take for each Covered Species will be determined using the methods described in Section 9.4.4.1 based on the most current available information.
  o Take estimates will include the requested take by season and sex for the covered bat species.
  o Methods and results of an analysis of the impacts of the (1) requested take of each covered bat species on maternity colonies and hibernacula, and (2) requested take of bald eagle on bald eagle Local Area Populations and Important Eagle Use Areas. Methods to conduct these analyses must be approved by the USFWS.

• A description of the Covered Species proposed mitigation determined in accordance with the procedures described in Section 9.4.5.

• Identification of AMMs described in Sections 5.1.3.1, 5.5.2, and 5.8.2 that will be implemented. Documentation must be provided that demonstrates how the design, siting, and construction-related AMMs have been addressed in facility siting and construction plans.

• A description of the operations-related AMMs that will be implemented (see Sections 5.2.2, 5.3.2, 5.4.2, and 5.5.2).

• A description of the BMPs described in Section 5.1.3.3 that will be implemented and a description of why any of the BMP requirements are not proposed to be implemented.

• A description of the monitoring to be implemented in accordance with the applicable monitoring requirements in Sections 7.2, 7.3, and 7.4, including methods used to determine carcass persistence in support of conducting operations effectiveness monitoring.

• A description of how all necessary funds will be assured and provided in accordance with the applicable provisions of Sections 8.2.2 and 8.2.3.

• Results of a review of the Facility-Specific Plan confirming consistency with the MWE programmatic ESA section 7 analysis.

4. The project proponent submits the ITP application, a letter prepared by a qualified consultant confirming that the methods used to estimate take are consistent with the methods described in this section, the completed NEPA consistency checklist (see
Appendix H of the MWE Environmental Impact Statement [EIS]), and the ITP application processing fee to the USFWS. The application fee is non-refundable.3

### 9.4.1.2 Existing Wind Energy Facilities

To receive an individual ITP for an existing facility, project proponents must provide the information required in this section. These procedures are generally the same as described for proposed wind energy facilities in Section 9.4.1.1, except that designing, siting, and construction-related AMMs and associated pre-construction survey requirements do not apply to pre-existing infrastructure. Individual ITP applications for future phases of an existing facility are considered to be new facilities and must comply with the requirements of Section 9.4.1.1.

1. The project proponent notifies the USFWS of its intent to apply for an ITP. The USFWS provides the project proponent with the ITP application requirements and preparation guidance.

2. The project proponent conducts presence/absence surveys during the summer to determine if covered bat species maternity colonies are present within or near the wind energy facility (see survey requirements in Section 5.1.2). Surveys are not required, with the approval of USFWS, if sufficient existing data collected within the previous 5 years is available to confirm the presence or absence of covered bat species maternity colonies in the vicinity of the wind energy facility. Project proponents should coordinate with the USFWS to determine the applicable MWE survey requirements and acceptable survey methods. Survey methods guidance is provided in Appendix G.

3. In coordination with the USFWS, the project proponent prepares a Facility-Specific Plan containing the following information in conformance with the requirements of the MWE. Project proponents should coordinate with the USFWS to prepare the Facility-Specific Plan.

   - A description of the Covered Activities, including the MW capacity; the facility location and boundary map; and a description of and GIS data layer (accurate to within 3 m) showing the number, type, and locations of wind turbines, buildings, operational facilities, roads, supporting infrastructure, and any other appurtenant facilities.
   
   - A list of the Covered Species for which coverage is required (i.e., Covered Species for which there is a potential for take).
   
   - A description and results of Covered Species surveys and habitat assessments conducted in accordance with the applicable survey requirements in Section 5.1.2.

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3 50 CFR §13.11.
• The methods and results of a take analysis documenting the estimated level of annual and cumulative operations-related take of each Covered Species over the requested term of the ITP.

  o The requested operations-related levels of take for each Covered Species will be determined using the methods described in Section 9.4.4.2 based on the most current available information.

  o Take estimates will include the requested take by season and sex for the covered bat species.

• Methods and results of an analysis of the impacts of the (1) estimated take of each covered bat species on maternity colonies and hibernacula, and (2) of the estimated take of bald eagle on bald eagle Local Area Populations and Important Eagle Use Areas. Methods to conduct these analyses must be approved by the USFWS.

• A description of the Covered Species proposed mitigation determined in accordance with the procedures described in Section 9.4.5.

• A description of the operations-related AMMs that will be implemented (see Sections 5.2.2, 5.3.2, 5.4.2, and 5.5.2).

• A description of the BMPs described in Section 5.1.1.3 that will be implemented and a description of why any of the BMP requirements are not proposed to be implemented.

• A description of the monitoring to be implemented in accordance with the applicable monitoring requirements in Sections 7.3, and 7.4.

• A description of how all necessary funds will be assured and provided in accordance with the applicable provisions of Sections 8.2.2 and 8.2.3.

• Results of a review of the Facility-Specific Plan confirming the Plan’s consistency with the MWE programmatic ESA section 7 analysis.

5. The project proponent submits the ITP application, a letter prepared by a qualified consultant confirming that the methods used to estimate take are consistent with the methods described in this section, and the ITP application processing fee to the USFWS. The application fee is non-refundable.⁴

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⁴ 50 CFR §13.11.
9.4.1.3 Approval of ITP Applications

The following describes the process for the USFWS’s issuance of a MWE ITP.

1. The USFWS will conduct the following evaluation of the ITP application and MWE EIS consistency checklist (see Appendix H of the MWE EIS).

   a. **General.** The USFWS will evaluate the ITP application to confirm that:

      - All of the required ITP application information described in Section 9.4.1.1 or 9.4.1.2, as applicable, has been provided, including an evaluation of the methods, data, and analyses conducted to estimate the level of take for each Covered Species and impacts on occupied habitat.

      - Take of all federally listed non-covered species will be avoided or take of any listed non-covered species is covered under a separate ITP.

      - The NEPA consistency checklist and the ESA section 7 consistency reviews have been appropriately completed. Per the USFWS’s *Final General Conservation Plan Policy* (USFWS 2007c), any analyses conducted by the USFWS that are necessary to make this determination will not trigger any additional ESA and NEPA public review processes.

      - Sufficient take is available under the MWE to meet the requested level of take.

   b. **Covered Bat Species.** The USFWS will evaluate the ITP application to confirm that the results of the analysis of the impact of covered bat species take on maternity colonies and hibernacula are consistent with the programmatic ESA analysis.

   c. **Bald Eagle.** The USFWS will evaluate the ITP application to confirm that the impact of bald eagle take on bald eagle Local Area Populations and Important Eagle Use Areas are consistent with the programmatic ESA analysis.

2. Based on its review of the ITP application, the USFWS will notify the applicant that the application has been approved or denied. If approved and following publication in the *Federal Register*, the USFWS will issue the ITP. If the application is denied, the USFWS will notify the applicant in writing that the application has been denied with all reasonable effort within 60 days of receipt of the application and will provide the applicant with the reasons for the denial. Applications may be denied if the USFWS finds its contents are not consistent with the application requirements described in Section 9.4.1.1 or 9.4.1.2, as applicable, (see Item 1.a above); if the USFWS does not concur with the findings of NEPA consistency checklist and/or the programmatic
ESA section 7 consistency review; if the USFWS makes a determination that the impact of the requested take of a covered bat species on maternity colonies or hibernacula are such that the biological goals and objectives will likely not be achieved; or if the USFWS determines that the impact of the requested take of bald eagle on Important Eagle Use Areas and Local Area Populations are such that the biological goals and objectives will likely not be achieved. The project proponent may confer with the USFWS and either modify the Facility-Specific Plan to remedy any deficiencies (e.g., provide additional information, adjust AMMs to reduce take of covered bat species take) and resubmit the ITP application or should seek take authorization outside of the MWE process. No additional ITP application fee will be paid by the project proponent.

3. The project proponent submits funding assurances prior to issuance of the ITP in accordance with the provisions of Sections 8.2.2 and 8.2.3.

4. The USFWS issues the project proponent an individual ITP.

9.4.1.4 Post-ITP Approval Commitments

Individual Permittees will continue to provide funding assurances for implementation of on-site AMMs and monitoring in accordance with the provisions of Section 8.2.2.1 over the term of the ITP. Funding assurances for mitigation, including monitoring, changed circumstances, and adaptive management actions, will continue in accordance with the mitigation funding assurances requirements and schedule described in Section 8.2.3.5.

9.4.2 Certificates of Inclusion

This section describes the procedures for project proponents to request a COI from the AIE. These procedures may be adjusted by the AIE over the first 15 years of MWE implementation (i.e., the MWE enrollment period; see Section 1.5) to improve the efficacy of preparing COI requests, processing COI requests, and granting COIs.

Project proponents must coordinate preparation of COI requests with the USFWS to ensure that surveys and analyses necessary to prepare the COI request will meet MWE requirements. A COI must request coverage for all Covered Species that could be taken by the wind energy facility, except as noted in Section 9.3.3. Regardless of the results of the facility’s take assessment, proposed and existing wind energy facilities that are located in the states indicated in Table 9-4 are assumed to have the potential for take of interior least tern and/or piping plover and must be included in the requested COI.

9.4.2.1 Proposed Wind Energy Facilities

COI request procedures for proposed wind energy facilities include the following.
1. The project proponent notifies the AIE of its intent to apply for a COI under the authority of its Master Permit. The AIE provides the project proponent with the COI application requirements and preparation guidance.

2. The project proponent conducts all pre-construction surveys that are applicable to the Covered Species for which take authorization is being requested (see Section 5.1.2). Project proponents should coordinate with the USFWS to determine the applicable MWE survey requirements and acceptable survey methods. Survey methods guidance is provided in Appendix G.

3. The project proponent completes the COI request form. A completed COI request will include:
   - The name of the proposed wind energy facility, name of the owner, and the proposed facility location, description, and boundary map.
   - The project proponent Point of Contact and contact information.
   - A description of the Covered Activities, including the MW capacity; the proposed facility location and boundary map; and a description of and GIS data layer (accurate to within 3 m) showing the number, type, and proposed locations of wind turbines, buildings, operational facilities, roads, supporting infrastructure, and any other appurtenant facilities.
   - A list of Covered Species for which coverage is required.
   - A description and results of Covered Species surveys and habitat assessments conducted in accordance with the survey requirements in Section 5.1.2.
   - The methods and results of a take analysis (1) documenting the acreage of each Covered Species habitat that will be removed by facility construction and (2) documenting the estimated level of annual and cumulative operations-related take of each Covered Species over the requested term of the COI. Project proponents must coordinate with the USFWS to prepare the take analysis.
     - The requested operations-related levels of take for each Covered Species will be determined using the methods described in Section 9.4.4.1 based on the most current available information.
     - Take estimates will include the requested take by season and sex for the covered bat species.
     - Methods and results of an analysis of the impacts of the (1) estimated take of each covered bat species on maternity colonies and hibernacula, and (2) of the estimated take of bald eagle on bald eagle Local Area Populations and Important Eagle Use Areas. Methods to conduct these analyses must be approved by the USFWS.
• A description of the Covered Species proposed mitigation determined in accordance with the procedures described in Section 9.4.5.

• Identification of AMMs in Section 5.1.3.1, 5.5.2, and 5.8.2 that will be implemented. Documentation must be provided that demonstrates how the design, siting, and construction-related AMMs have been addressed in facility siting and construction plans.

• A description of the BMPs described in Section 5.1.3.3 that will be implemented and a description of why any of the BMP requirements are not proposed to be implemented.

• A description of the monitoring to be implemented in accordance with the applicable monitoring requirements in Sections 7.2, 7.3, and 7.4.

• A description of how all necessary funds will be assured and provided in accordance with the applicable provisions of Sections 8.2.2 and 8.2.3.

• Results of a review of the COI request confirming the COI request’s consistency with the MWE programmatic ESA section 7 analysis.

4. The project proponent submits the COI request to the AIE, a letter from a qualified consultant confirming that the methods used to estimate take are consistent with the methods described in this section, and the COI Request Fee (see Section 8.2.1.2). The COI Request Fee is non-refundable.

9.4.2.2 Existing Wind Energy Facilities

The following describes the COI request procedures for existing wind facilities. These procedures are generally the same as described for proposed wind energy facilities, except that designing, siting, and construction-related AMMs and associated pre-construction survey requirements do not apply to pre-existing infrastructure.

1. The project proponent notifies the AIE of its intent to request a COI under the authority of its Master Permit. The AIE provides the project proponent with the COI application requirements and preparation guidance.

2. The project proponent conducts presence/absence surveys during the summer to determine if covered bat species maternity colonies are present within or near the wind energy facility (see survey requirements in Section 5.1.2). Survey methods guidance is provided in Appendix G. Surveys are not required if sufficient existing data is available to confirm the presence or absence of covered bat species maternity colonies in the vicinity of the wind energy facility.

3. The project proponent completes the COI application form. A completed Application will include:
• The name of the wind energy facility, name of the owner, and the facility location, description, and boundary map.

• The project proponent Point of Contact and contact information.

• A description of the Covered Activities, including the MW capacity; the facility location and boundary map; and a description of and GIS data layer (accurate to within 3 m) showing the number, type, and locations of turbines, buildings, operational facilities, roads, supporting infrastructure, and any other appurtenant facilities.

• A list of the Covered Species for which coverage is required.

• Documentation indicating that the wind energy facility will not result in take of a non-covered listed species, including a description of data, survey results, and analyses supporting the finding that the proposed wind energy facility will avoid take of non-covered listed species.

• A description and results of Covered Species surveys and habitat assessments conducted in accordance with the applicable survey requirements in Section 5.1.2.

• The methods and results of a take analysis documenting the estimated level of annual and cumulative operations-related take of each Covered Species over the requested term of the ITP.
  
  o The requested operations-related levels of take for each Covered Species will be determined using the methods described in Section 9.4.4.2 based on the most current available information.
  
  o Take estimates will include the requested take by season and sex for the covered bat species.

• Methods and results of an analysis of the impacts of the (1) estimated take of each covered bat species on maternity colonies and hibernacula, and (2) of the estimated take of bald eagle on bald eagle Local Area Populations and Important Eagle Use Areas. Methods to conduct these analyses must be approved by the USFWS.

• The acres of occupied Covered Species habitats that will be removed by any projected future build out of the existing wind energy facility.

• A description of the Covered Species proposed mitigation determined as described in Section 9.4.5.

• A description of the operations-related AMMs that will be implemented (see Sections 5.2.2, 5.3.2, 5.4.2, and 5.5.2).

• A description of the BMPs described in Section 5.1.3.3 will be implemented and a description of why any of the BMP requirements are not proposed to be implemented.
• A description of the monitoring to be implemented in accordance with the applicable monitoring requirements in Sections 7.3, and 7.4.

• A description of how all necessary funds will be assured and provided in accordance with the applicable provisions of Section 8.2.2 and 8.2.3.

• Results of a review of the COI request confirming the COI request’s consistency with the MWE programmatic ESA section 7 analysis.

4. The project proponent submits the COI request to the AIE, a letter from a qualified consultant certifying that the methods used to estimate take comply with the MWE approved methods, the completed NEPA consistency checklist (see Appendix H of the MWE EIS), and a COI Request Fee (see Section 8.2.1.2). The COI Request Fee is non-refundable.

9.4.2.3 Granting of COIs

The following describes the process for the AIE’s issuance of a COI under its Master Permit.

1. On receipt of the COI request and the COI Request Fee (see Section 8.2.1.2), the AIE will make a determination that (1) the COI request is complete and consistent with all the applicable requirements of the MWE and (2) sufficient take is available to meet the requested level of take. If the AIE determines that the COI request is incomplete or inconsistent with the MWE or that the amount of take authorization requested is unavailable under the MWE, it will advise the project proponent of the specific deficiencies, and the project proponent may revise the COI request for resubmittal and review by the AIE. The AIE may require payment of a fee in an amount commensurate with the costs of reviewing the revised portions of the COI request.

In its review of COI requests for completeness and consistency with the MWE, the AIE will verify that the following MWE requirements have been met.

a. The wind energy facility activities are covered under the MWE and the facility is located in the Covered Lands (see Figure 1-4).

b. The facility location and supporting infrastructure are described in sufficient detail to support the take analysis.

c. Required surveys, were conducted in accordance with MWE requirements (see Section 5.1.2).

d. The take analysis has been completed using methods consistent with MWE requirements (see Section 9.4.2.1 or 9.4.2.2, as applicable to the facility, and Section 9.4.4).

e. The requested level of Covered Species take is consistent with the remaining available MWE take allowance.
f. The proposed AMMs are consistent with MWE AMM requirements as applicable to the facility (see Section 5.1.3.1 and Sections 5.2-5.8).

g. The proposed BMPs are consistent with MWE BMP requirements as applicable to the facility (see Section 5.1.3.3).

h. The proposed monitoring protocols are consistent with MWE monitoring requirements as applicable to the facility (see Sections 7.2, 7.3, and 7.4).

i. The methods used to calculate mitigation requirements are consistent with MWE requirements (see Section 9.4.5).

j. The proposed funding assurances are consistent with MWE requirements (see Sections 8.2.2, and 8.2.3.5).

2. Following the AIE’s verification that the COI request meets MWE requirements, it will provide the COI request and results of its review to the USFWS to conduct a consistency review. Following completion of its consistency review, the USFWS will notify the AIE that it either does not object to or objects to the COI request. The consistency review will be completed within 60 days. The consistency review period may be extended by the USFWS by 10 days, one time for each COI request submitted for review with the USFWS’s written notification to the AIE requesting the extension. The notification must be submitted within 5 business days prior to the expiration of the 60-day review period and will include information supporting the extension request.

The USFWS will conduct the following consistency review of each COI request.

a. **General.** The USFWS will review the COI request to confirm that:

   - All of the required COI request information described in Section 9.4.2.1 or 9.4.2.2, as applicable, has been provided, including an evaluation of the methods, data, and analyses conducted to estimate the level of take for each Covered Species and impacts on occupied habitat.

   - Take of all ESA-listed non-covered species will be avoided or that take of any listed non-covered species is covered under a separate ITP.

   - The ESA section 7 consistency reviews have been appropriately completed and the COI request is conforms with the NEPA consistency checklist (see Appendix H of the MWE EIS). Per the USFWS’s *Final General Conservation Plan Policy* (USFWS 2007c), any analyses conducted by the USFWS that are necessary to make this determination will not trigger any additional ESA and NEPA public review processes.

   - Sufficient take is available under the MWE to meet the requested level of take.
b. **Covered Bat Species.** The USFWS will review the COI request to confirm that the results of the analysis of the impact of covered bat species take on maternity colonies and hibernacula are consistent with the programmatic ESA analysis.

c. **Bald Eagle.** The USFWS will review the COI request to confirm that the impact of bald eagle take on bald eagle Local Area Populations and Important Eagle Use Areas are consistent with the programmatic ESA analysis.

3. If the USFWS indicates to the AIE that it does not object to the COI request based on its consistency review, the AIE will provide the applicant with a Participation Agreement by which the project proponent’s participation will be governed. The Participation Agreement will be executed by the project proponent and AIE. If the USFWS, based on results of its consistency review, objects to a COI request, it will notify the AIE and confer with the AIE and project proponent to reach a satisfactory resolution in order to obtain the COI or, if no resolution is possible, the project proponent should seek an ITP outside of the MWE process.

4. Upon the AIE’s receipt of an executed Participation Agreement, Permit Administration Fee (see Section 8.2.1.2), and submittal of initial funding assurances in accordance with the provisions of Sections 8.2.2 and 8.2.3.5, the AIE will issue a COI to the project proponent to memorialize the participation and allocate take authorization to the wind energy facility.

### 9.4.2.4 Post-COI Granting Commitments

COI-holders will continue to provide funding assurances for implementation of on-site AMMs and monitoring in accordance with the provisions of Section 8.2.2.2 over the term of the COI. Funding assurances for mitigation, including monitoring, changed circumstances, and adaptive management actions, will continue in accordance with the mitigation funding assurances requirements and schedule described in Section 8.2.3.5.

### 9.4.3 Transfer of Take Authorizations

Over the term of the MWE, it is possible for wind energy facilities that have received an individual ITP to transfer ownership to a new entity. In the event of a wind energy facility coming under new ownership, the existing take authorization, in accordance with ESA regulations governing the transfer of permits, will be transferred to the new owner if:

1. The proposed transferee meets all of the qualifications under this part for holding a permit;

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The Permit Administration Fee is a fee that provides the funding necessary for the AIE to fulfill its administrative functions as set forth in the MWE and Participation Agreement. As described in Section 8.2.1.2.2, upon signing the Participation Agreement the COI applicant pays 50 percent of the Permit Administration Fees that are assessed for the full term of its COI.
(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission."

The request to transfer an individual ITP will require that the transferee prepare and submit an ITP application to the USFWS requesting the transfer. No application fee is required.

COI-holders may transfer their COIs to a new facility owner by submitting a COI request to the AIE requesting the transfer. No COI Request Fee is required. For the COI to be granted, the new owner must agree to abide by all terms and conditions of the original COI and Participation Agreement with the AIE. The level of Covered Species take accorded to the transferred individual ITP and COI will be the level of unused take remaining on the original individual ITP and COI at the time the take authorization is transferred.

9.4.4 Allocation of Take

The amount of Plan Area-wide direct take of Covered Species available for allocation to proposed wind energy facilities is presented in Table 9-5. Take that is allocated to existing wind energy facilities that are currently operating under a USFWS technical assistance letter (TAL), and thus are operating at turbine cut-in speeds that avoid take of covered bat species, is included in the covered bat species take available for allocation to proposed wind energy facilities.

Issuance of take authorizations to existing wind energy facilities currently not operating under a USFWS TAL will require implementation of all applicable operations-related AMMs (see Sections 5.2.2, 5.3.2, 5.4.2, and 5.5.2) and thus are expected to result in beneficial reductions in take of covered bat species from baseline conditions. Consequently, other than existing wind energy facilities that previously operated under a TAL, the amount of Plan Area-wide direct take of covered bat species available for allocation to existing wind energy facilities is not limited (see Table 9-5); however, the level of take authorized in individual ITPs and COIs will be limited to the amount of take determined in each facility’s take assessment (see Section 9.4.4.2).

Implementation of the operations-related AMMs, unlike for the covered bat species, are not expected to result in an appreciable reduction in the incidental take of covered bird species from baseline conditions. Consequently, take available for allocation to both proposed and existing wind facilities are presented in Table 9-5.

During the first 5 years and the first 15 years of MWE implementation (i.e., the period within which existing wind energy facilities and proposed wind energy facilities, respectively, may apply for take authorization; see Section 1.5), it is possible for a wind energy facility that has

_6_ 50 CFR 13.25(b).
received a take authorization to go out of business, surrender its take authorization, or have its take authorization revoked (see Sections 8.7 and 9.11). In such instances, the remaining balance of the authorized take that has not been used will become available for issuance under subsequent take authorizations.

Table 9-5. Plan Area-Wide Take of Covered Species available for Allocation to Wind Energy Facilities under MWE Take Authorizations

<table>
<thead>
<tr>
<th>Covered Species</th>
<th>Maximum Number of Allowable Take over the 45-Year Term of the MWE (number of individuals)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Proposed Facilities</td>
</tr>
<tr>
<td>Indiana bat</td>
<td>10,604(^1)</td>
</tr>
<tr>
<td>Northern long-eared bat</td>
<td>17,775(^1)</td>
</tr>
<tr>
<td>Little brown bat</td>
<td>753,208(^1)</td>
</tr>
<tr>
<td>Kirtland’s warbler</td>
<td>60</td>
</tr>
<tr>
<td>Interior least tern</td>
<td>9</td>
</tr>
<tr>
<td>Piping plover (Great Lakes Population)</td>
<td>2</td>
</tr>
<tr>
<td>Piping plover (Northern Great Plains Population)</td>
<td>26</td>
</tr>
<tr>
<td>Bald eagle</td>
<td>2,588</td>
</tr>
</tbody>
</table>

\(^1\) The level of allowable take does not include any reduction in the take of covered bat species that will be associated with the implementation of the operations-related AMMs presented in Tables 5-4, 5-6, and 5-8.

\(^2\) There are no Plan Area-wide limitations on allocation of take for the covered bat species for existing wind energy facilities because implementation of the operations-related AMMs presented in Tables 5-4, 5-6, and 5-8 are expected to result in beneficial reductions in take of covered bat species from baseline conditions. Limitations on take for each existing wind energy facility receiving a take authorization, however, will be limited to the results of each facility’s covered bat species take assessment (see Section 9.4.4.2) and the triggering of any applicable changed circumstances (see Section 8.4).

9.4.4.1 Take Estimation for Proposed Wind Energy Facilities

Project proponents applying for a take authorization will be required to implement the applicable surveys described in Section 5.1.2. Data collected in these surveys, along with relevant regional monitoring and research data will be used to estimate the level of take associated with the proposed or existing wind energy facility.

Sufficient take will be allocated in ITPs issued for USFWS-approved ITP applications and COIs issued for AIE approved COI applications to cover the amount of each facility’s estimated level of take. Facilities that are located in the states indicated in Table 9-4 must request coverage for take of interior least tern and piping plover.

9.4.4.1.1 Estimation of Covered Bat Species Take Requests

One of the following two methods may be employed to estimate the level of take associated with a proposed or existing wind energy facility, depending on the availability and quality of data available for the facility location.

- Species Composition Method
Collision Risk Model Method

These methods are described in the following subsections. Under both methods, take is estimated without the assumed application of the cut-in speed AMMs in Tables 5-4, 5-6, and 5-8. If a wind energy facility’s take estimate is less than 1 individual of a covered bat species per year, the requested level of take must be 1 individual per year for that covered bat species.

Prior to submitting an ITP application to the USFWS or a COI application to the AIE, the project proponent should coordinate with the USFWS to determine the most appropriate method that will be used to estimate take levels (use of inappropriate take estimation methods will preclude issuance of a take authorization). Take will be estimated for the spring migration period (April 1 to May 31), the summer period (June 1 to July 31), and the fall migration period (August 1 to October 31). Depending on the quality of the available datasets, the USFWS may require that take levels be estimated using more than one method. In such instances, the USFWS, in coordination with the project proponent, will determine the estimated level of facility take based on an evaluation of the assumptions used in and results of each method.

Species Composition Method

The species composition approach for estimating mortality from wind turbine operations assumes that the proportion of documented wind turbine fatalities of the evaluated covered bat species, relative to the fatalities of all other bat species, is representative of the proportion of fatalities of the covered bat species expected for proposed and existing wind energy facilities seeking coverage under the MWE. The steps involved in the species-composition method are:

1. Determine the anticipated bat fatality rate for the geographic area of interest based on the results of fatality monitoring studies;
2. Determine the proportion of the covered bat species among all bat fatalities in fatality monitoring studies in the applicable range of the covered bat species; and
3. Multiply the proportion of the covered bat species by the expected fatality rate to derive the expected number of total fatalities of the covered bat species. For example, if the total estimated bat mortality from regional data is 12 bats/MW/year (or 1,200 bats/year for a 100 MW facility) and the number of the covered bat species fatalities detected in the studies was 1 out of 100 (0.01), the estimated number of fatalities of the covered bat species would be 12 per year.

The proportion of the expected covered bat species fatalities will be calculated using fatality monitoring data collected from existing wind facilities located in similar geographic areas and any other relevant data.

Use of this method requires information supporting the selection of the species composition method for use in conducting the analysis, a description of the assumptions and supporting
information used to apply the method, and documentation of fatality studies and methods used to estimate the level of covered bat species take.

Collision Risk Model Method

The collision risk model method involves modeling the rate at which a covered bat species will encounter a wind energy facility and the probability of an individual colliding with a wind turbine blade as it passes through the wind energy facility. The five primary data and assumption requirements of collision risk models include:

1. Developing an estimate of the seasonal population in the facility boundary,
2. Developing assumptions regarding the flight height of covered bat species passing through the wind energy facility,
3. Developing assumptions regarding the seasonal probability distributions of wind speeds and temperatures within the vicinity of the wind energy facility,
4. Developing assumptions regarding the movements of the covered bat species within the array of wind turbines, and
5. Estimating the probability for mortality based on the modeled number of encounters with wind turbines.

Use of this method requires information supporting the selection of the collision risk model method for use in conducting the analysis, a description of the model assumptions and supporting information, and a description of the data collection methods and sources used to develop and apply the model. Until such time that a standardized collision risk model is approved for use under the MWE, the proposed collision risk modeling method must be reviewed and approved by the USFWS.

9.4.4.1.2 Estimation of Kirtland’s Warbler Take Requests

Facility-level estimated take of Kirtland’s warbler will be estimated using the Species Composition Method as described in Section 9.4.4.1.1, except that application of these methods will rely on data available for other warbler and song bird species with similar habits, or the Surrogate Species Method described below.

Surrogate Species Method

The surrogate-species approach for estimating mortality uses a surrogate species for which there is sufficient information available to credibly estimate take for the species under evaluation. Documented wind turbine fatalities of the surrogate species is used to estimate the level of take of Kirtland’s warbler. The selected surrogate species is one that shares similar behaviors with Kirtland’s warbler (e.g., other warbler species) and usually one that is commonly documented in
mortality monitoring studies at wind energy facilities, and is used to infer mortality for Kirtland’s warbler. The steps involved in the surrogate method are:

1. Determine the anticipated bat fatality rate for the region of interest based on the results of fatality monitoring studies;
2. Determine the proportion of the surrogate species among fatalities monitoring studies in the region to derive the expected number of total surrogate fatalities;
3. Determine the relative abundance of each species on the landscape; and
4. Apply the ratio of Kirtland’s warbler to the surrogate to the estimated number of surrogate fatalities to determine the estimated number of fatalities for Kirtland’s warbler.

For example, if the total estimated surrogate warbler species mortality from regional data is 12 warblers/MW/year (or 1,200 warblers/year for a 100 MW facility), and the number of surrogate warbler fatalities out of all warbler fatalities was 10 out of 100 (or 10 percent), the total estimated surrogate mortality would be 120 surrogates fatalities/year. If the ratio of surrogate species to Kirtland’s warbler abundance estimated during field studies was 100 to 1 (0.01), the estimated number of fatalities of Kirtland’s warbler would be 1.2 per year.

Use of this method requires information supporting the selection of the surrogate species method, the selection of the surrogate species for use in conducting the analysis, the abundance of the surrogate species relative to the Kirtland’s warbler, a description of the assumptions and supporting information used to apply the method, and documentation of fatality studies and methods used to estimate the level of Kirtland’s warbler take.

9.4.4.1.3 Interior Least Tern and Piping Plover Take Requests

Each proposed or existing wind energy facility located within the states identified in Table 9-4 will be authorized to take 1 interior least tern and/or 1 piping plover from the Great Lakes Population and/or 1 piping plover from the Northern Great Plains Population over the term of their individual Permit or COI. Under this approach, the collective level of take eventually authorized under ITPs and COIs will likely exceed the total Plan Area-wide take allocation (see Table 9-5). If results of operations effectiveness monitoring (see Section 7.3.2.1.2) indicate that the Plan Area-wide level of authorized take could be exceeded in subsequent years, either the adaptive management actions described in Sections 7.3.3.3 and/or 7.3.3.5, or the changed circumstance provisions described in Section 8.4.5 will be triggered.

9.4.4.1.4 Estimation of Bald Eagle Take Requests

The level of bald eagle take will be estimated using the USFWS bald eagle collision risk model presented in Appendix D of the Eagle Conservation Plan Guidance (USFWS 2013d; see Appendix E). The data and assumptions used in the model for estimating facility-specific take, however, will be updated to only include information relevant to the location of the proposed
wind energy facility (e.g., results of pre-construction surveys, bald eagle survey data from existing wind energy facilities with similar site conditions).

### 9.4.4.2 Take Estimation for Existing Wind Energy Facilities

Existing wind energy facilities must estimate take for each Covered Species using the methods described for proposed wind energy facilities in Section 9.4.4.1, except that existing wind energy facilities may use the following types of information to generate the estimated level of covered bat species take.

- Acoustic monitoring data from pre-construction surveys,
- Mist-netting data from the facility,
- Fatality monitoring data from the project, and
- Data from nearby and similarly situated wind energy facilities.

The covered bat species take estimate will include the estimated level of take without implementation of the operations-related AMMs described in Tables 5-4, 5-6, and 5-8.

### 9.4.4.3 Spatial Limitations on Allocation of Take

The allocation of the take levels presented in Table 9-5 are not spatially restricted (i.e., limits on take are not restricted by state or other specified geographic areas). During the term of the MWE, however, the USFWS may discontinue issuance of take authorizations for the Indiana bat and bald eagle within specified geographic portions of the Covered Lands. Wind energy facilities proposed within any such specified closed area will need to seek a take authorization outside of the MWE. Existing take authorizations for Indiana bat or bald eagle issued to facilities within closed areas will continue to remain in effect.

#### 9.4.4.3.1 Covered Bat Species

Issuance of covered bat species take authorizations may be discontinued in specified geographic areas if the USFWS makes a determination during its evaluations of ITP applications and consistency reviews of COI applications that any further issuance of a take authorization under the requirements of the MWE is likely to result in the loss of a covered bat species maternity colony or hibernacula complex. A specified area sufficient to protect a maternity colony or hibernacula complex will be closed to further issuance of covered bat species take authorizations if the USFWS determines that the likely loss of a particular maternity colony or hibernacula complex will preclude the ability to achieve the covered bat species biological goals and objectives (see Sections 5.2.1, 5.3.1, and 5.4.1). If the USFWS determines that take of a covered bat species may no longer be authorized in a specified portion of the Plan Area, the USFWS will notify the AIE and project proponents in the process of seeking an individual ITP within 5 business days that MWE take authorizations will no longer be issued for wind energy facilities that are proposed within the specified area.
9.4.4.3.2 Bald Eagle

Issuance of bald eagle take authorizations may be discontinued in specified geographic areas if the USFWS makes a determination during its review of ITP applications and consistency review of COI applications that any further issuance of a take authorization under the requirements of the MWE is likely to result in the loss of more than 5 percent of individuals in a Local Area Population. A specified area sufficient to protect the Local Area Population will be closed to further issuance of take authorizations if the USFWS determines that the level of additional requested take will preclude the ability to achieve the bald eagle biological goals and objectives. If the USFWS determines that take of bald eagle may no longer be authorized in a specified portion of the Plan Area, the USFWS will notify the AIE and project proponents in the process of seeking take authorization within 5 business days that MWE take authorizations will no longer be issued under the MWE for wind energy facilities that are proposed within the specified area.

9.4.5 Determination of Mitigation Requirements

9.4.5.1 Take of Covered Species

Mitigation requirements for the take of covered bat species will be calculated using USFWS-developed Resource Equivalency Analysis (REA) models (see Appendix C). Results of the REA models include options for mitigating the impact of take on each bat species. As described in Section 5.1.4, other mitigation options may be added to the REA models over the term of the MWE through the process described in Section 9.12 if they are proven effective for mitigating take.

Mitigation requirements for the take of covered bird species will be determined using mitigation requirement calculation methods described in Sections 5.5.3, 5.6.3, 5.7.3, and 5.8.3 for the Kirtland’s warbler, interior least tern, piping plover, and bald eagle respectively. As described in Section 5.8.3.1.2 for the bald eagle and as provided for all covered bird species through the process described in Section 9.12, additional options for mitigating take of the covered bird species may become available over the term of the MWE.

9.4.5.2 Indirect Impacts on Covered Species

As described in Chapter 4, indirect impacts of the covered bat species, Kirtland’s warbler, and bald eagle may result from impacts on occupied habitat. Mitigation requirements for impacts on occupied covered bat species, Kirtland’s warbler, and bald eagle habitat will be determined through application of the USFWS’ Habitat Equivalency Analysis (HEA) methodology. Until such time as the HEA method can be modified for use by ITP and COI applicants, the USFWS will determine mitigation requirements for indirect impacts. During the take authorization application process, each project proponent will provide the USFWS with the information necessary for the USFWS to determine the mitigation requirements.
9.5 **ANNUAL MIE AND AIE WORK PLANS AND BUDGETS**

On an annual basis, the MIE and AIE will prepare a work plan and budget for the upcoming implementation year through the term of the MWE.

9.5.1 **MIE Annual Work Plans and Budgets**

MIE work plans will identify planned actions for the acquisition of mitigation sites, mitigation activities, monitoring of mitigation sites, and all administrative activities in the coming year. MIE annual budgets will identify planned expenditures and sources of funding for those expenditures. A draft Annual Work Plan and Budget will be provided to the AIE for review and comment no later than 30 days prior to the annual due date (to be determined by the AIE and MIE at the time of the MIE’s establishment) for the final Annual Work Plan and Budget. The MIE will confer with the AIE to address any comments received to the Draft Annual Work Plan and Budget. The final Work Plan and Budget will be approved by the AIE no later than 1 month prior to the beginning of the upcoming implementation year.

The Annual Work Plan and Budget will contain, but not be limited to, the following information:

- A description of the planned actions to implement mitigation-related activities, including the acquisition of mitigation sites, and the entities that will carry out the actions;
- A description of the planned mitigation monitoring actions to be undertaken, and the entities that will conduct the monitoring;
- A description of planned transfer of mitigation lands and conservation easements to a third party with concurrence of the USFWS;
- A budget reflecting the costs of implementing the planned mitigation actions and monitoring along with all other costs for operating the MIE in the work plan year and a summary of the projected and actual budgets for all prior implementation years;
- A description of the sources of funding to support the budget; and
- A financial report describing the:
  - Mitigation fees received by the MIE by source cumulatively through the previous implementation year.
  - Annual and cumulative expenditures by cost category through the previous implementation year.
  - Deviations in expenditures from the previous implementation year’s budget, an explanation for the deviations, and other relevant information as appropriate.
9.5.2 AIE Annual Work Plans and Budgets

At the time of the AIE’s submittal of its ITP application for a Master Permit, the AIE must provide the USFWS with a detailed cost estimate and a description of its funding sources for the first year of its operation. In all subsequent years over the term of the Master Permit, the AIE must prepare an Annual Work Plan and Budget. AIE annual work plans will identify planned administrative activities related to implementing all of the AIE’s functions described in Section 9.2.2 that are applicable to each year’s work plan. Submittal of annual budgets will address any increases in AIE costs and funding requirements attributable to inflation from the cost estimate and funding requirements described in Section 8.2.1.1. Annual budgets will identify planned expenditures, including overhead costs (e.g., labor; office space, supplies, and equipment; data management) and planned capital expenditures. Annual budgets will also identify the sources of funding for those expenditures. A draft Annual Work Plan and Budget will be provided to the USFWS for review and comment no later than 30 days prior to the annual due date (to be determined by the USFWS and the AIE prior to the issuance of the Master Permit) for the final Annual Work Plan and Budget. The AIE will confer with the USFWS to address comments received to the draft Annual Work Plan and Budget. The final Work Plan and Budget will be approved by the USFWS no later than 1 month prior to the beginning of the upcoming implementation year. Annual AIE budgets provide the basis for determining the AIE’s annual funding assurance requirements as described in Section 8.2.1.3.

9.6 INDIVIDUAL PERMITTEE AND COI-HOLDER RESPONSIBILITIES

Individual Permittees/COI-holders are responsible for complying with all applicable statutory, regulatory, and MWE requirements including, but not limited to, those described in Table 9-6.
## Table 9-6. Individual Permittee and COI-Holder MWE Implementation Responsibilities

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Responsible Entity</th>
<th>MWE Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providing funding assurances in accordance with funding assurance requirements</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 8.2.2 and 8.2.3.5</td>
</tr>
<tr>
<td>and schedules</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring and augmenting mitigation funding assurances if necessary</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 8.2.3.5.3</td>
</tr>
<tr>
<td>Payment of Permit Administration Fees to the AIE</td>
<td>All COI-holders</td>
<td>Section 8.2.1.2</td>
</tr>
<tr>
<td>Payment of MWE Coordinator Fees and, if applicable to the individual Permittee,</td>
<td>All individual Permittees</td>
<td>Section 8.2.1.2</td>
</tr>
<tr>
<td>Service Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring and enforcing compliance with the terms and conditions of mitigation</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 9.7.2.4</td>
</tr>
<tr>
<td>site conservation easements</td>
<td>COI-holders directly implementing mitigation</td>
<td></td>
</tr>
<tr>
<td>Payment of mitigation fees to the MIE in accordance with the mitigation schedule</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 8.2.3.2 and 9.7.1</td>
</tr>
<tr>
<td>Conducting applicable construction monitoring</td>
<td>All individual Permittees and COI-holders for proposed wind energy facilities</td>
<td>Section 7.2</td>
</tr>
<tr>
<td>Conducting all applicable operations monitoring</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 7.3</td>
</tr>
<tr>
<td>Conducting all applicable mitigation monitoring</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 7.4</td>
</tr>
<tr>
<td>Acquiring mitigation sites and preparing Mitigation Site Plans</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 9.7.2.2 and 9.7.2.3</td>
</tr>
<tr>
<td>Implementing Kirtland’s warbler, interior least tern, piping plover, and bald</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 5.5.3, 5.6.3, 5.7.3, 5.8.3,</td>
</tr>
<tr>
<td>eagle mitigation</td>
<td></td>
<td>9.7.2.2.2 to 9.7.2.2.4, and 9.7.2.3</td>
</tr>
<tr>
<td>Conducting and preparing mitigation baseline survey reports</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 5.2.3.3, 5.3.3.3, and 5.4.3.3</td>
</tr>
<tr>
<td>Providing environmental compliance and permitting for habitat restoration</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 8.2.3.1</td>
</tr>
<tr>
<td>mitigation projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting detected fatalities of Covered Species and other native wildlife</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 9.10.2</td>
</tr>
<tr>
<td>species to the USFWS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Responsibility

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Responsible Entity</th>
<th>MWE Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparing and submitting Annual Compliance Reports, as applicable, to the USFWS or AIE(^1)</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 9.10.1</td>
</tr>
<tr>
<td>Monitoring for and preparing changed circumstances Event Evaluations to document occurrences of changed circumstances in mitigation sites</td>
<td>All individual Permittees and COI-holders directly implementing mitigation</td>
<td>Sections 7.4.1.4, 8.4.2, and 9.10.3</td>
</tr>
<tr>
<td>Implementing planned responses to changed circumstances</td>
<td>All individual Permittees and COI-holders directly implementing mitigation</td>
<td>Section 8.4.2</td>
</tr>
<tr>
<td>Reporting potential occurrences of an unforeseen circumstance in mitigation sites, as applicable, to the USFWS and AIE(^1)</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 9.10.1 and 9.10.3</td>
</tr>
<tr>
<td>Reporting the actuation of an adaptive management trigger and implemented adaptive management actions, as applicable, to the USFWS and the AIE(^1)</td>
<td>All individual Permittees and COI-holders</td>
<td>Sections 7.3.3 and 7.4.3</td>
</tr>
<tr>
<td>Participating in periodic reviews of MWE implementation procedures with the USFWS, AIE, and MIE</td>
<td>All individual Permittees</td>
<td>Section 9.12</td>
</tr>
<tr>
<td>Submitting requests for minor and major amendments, as applicable, to the USFWS or AIE(^1)</td>
<td>All individual Permittees and COI-holders</td>
<td>Section 8.6.2 and 8.6.3</td>
</tr>
<tr>
<td>Ongoing coordination with the USFWS and AIE, as applicable, over the term of the MWE</td>
<td>All individual Permittees and COI-holders</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

\(^1\) Individual Permittees report to the USFWS and COI-holders report to the AIE as the Master Permitee.

## 9.7 Mitigation Program

Individual Permittees are responsible for ensuring that all of their mitigation requirements are implemented and the AIE, as the Master Permitee, is responsible for ensuring all mitigation requirements of COI-holders are implemented. Mitigation for the take of and indirect impacts on the covered bird species must be implemented by individual Permittees/COI-holders as described in Sections 9.7.2.2.2 to 9.7.2.2.4 or Section 9.7.2.3.

Off-site habitat mitigation for the take of and indirect impacts on the covered bat species may be implemented by the MIE with payment of mitigation fees by COI-holders and individual Permittees entering into a contract with the MIE. Individual Permittees/COI-holders may also directly implement habitat mitigation for the covered bat species or purchase mitigation credits as described in Section 9.7.2.3. Except as noted in Section 9.7.1, mitigation must be implemented in advance of take.
The amount of mitigation for take of covered bat species and bald eagle during the first 3 years of operations following receipt of a take authorization will be based on the level of authorized take. The amount of covered bat species and bald eagle mitigation required for the fourth and subsequent years of operations-related take will be based on the Evidence of Absence (EoA) modeling (see Section 7.3.2.1.1 and Appendix F) take estimate. The take estimate will be based on effectiveness monitoring results for all years prior to the time that an individual Permittee/COI-holder is calculating their mitigation requirements (see Section 9.7.1). The level of take for which mitigation is required is the median EoA take estimate, which provides the best estimate of take. As described in Section 7.3.2.1.1 and Appendix F, using the aggregated results of monitoring over the term of a take authorization will achieve a high probability for estimating the actual take of covered bat species and bald eagle, thus ensuring that the mitigation provided will offset or exceed the impacts of the take. As described in Section 9.7.1, the mitigation requirements will periodically be “trued-up” to account for variability in take estimates over time to further ensure that sufficient mitigation is implemented to offset a facility’s take over the term of its take authorization. The amount of mitigation required for Kirtland’s warbler, interior least tern, and piping plover will be the amount of take authorized in each facility’s individual ITP or COI.

9.7.1 Timing of Mitigation Actions

The mitigation implementation schedule requirements described below are designed to ensure that mitigation will be implemented in advance of take after the first 5 years following the initiation of activities that impact Covered Species habitat for new wind energy facilities and from the time a take authorization is issued to an existing wind energy facility.

Individual Permittees/COI-holders that are implementing mitigation must implement mitigation for their take in accordance with the mitigation timing requirements. The MIE, under its contractual obligations to the AIE, will be responsible for ensuring that the mitigation for which COI-holders have paid mitigation fees is implemented such that the collective take of COI-holders using the MIE is implemented in accordance with the mitigation schedule. Individual Permittees that have contracted with the MIE to implement mitigation will be responsible for ensuring that the MIE implements their mitigation requirements in accordance with the mitigation schedule.

9.7.1.1 Mitigation for Take of Covered Bat Species

Individual Permittees/COI-holders implementing mitigation and mitigation implemented by the MIE must be implemented in accordance with one of the mitigation schedule options described in the following subsections.

9.7.1.1.1 Incremental Mitigation Based on EoA Take Determinations

Mitigation to compensate for the first 5 years of take at levels authorized in individual ITPs and COIs must be implemented within 3 years of impacting Covered Species habitat for proposed
wind energy facilities and, for existing facilities, within 3 years of the issuance of the individual ITP or the granting of the COI. Mitigation requirements for subsequent increments will be based on the annual level of take estimated through application of the EoA model (see Section 7.3.2.1.1 and Appendix F) over the period for which mitigation will be provided (i.e., each 5- to 15-year increment).

The estimated take level that will be used to establish mitigation requirements for subsequent increments of mitigation will be based on application of EoA modeling using the results of Intensive Monitoring (conducted during the first 3 years of operations) and Roads and Pads Monitoring (conducted from operations year 4 through the remaining term of the take authorization) for all previous years (see Section 7.3.2.1.1). Results of the EoA modeling will be prorated to the term of the subsequent mitigation increment. For example, if an individual Permittee/COI-holder chooses to implement mitigation in 10-year increments starting in mitigation year 6 and the EoA modeling for monitoring years 1–5 indicated that 10 little brown bats were taken during that 5-year period, then the mitigation requirement for mitigation years 6–10 would be based on take of 15 little brown bats. Selection of this mitigation option provides flexibility for spreading mitigation costs over time and for minimizing the exposure of mitigation sites to white-nose syndrome (WNS) (see Section 3.1.2) by providing time to adjust where and how mitigation is implemented in future years (e.g., allowing future mitigation to be sited in portions of the Plan Area that are least likely to be affected by WNS).

All of the mitigation requirements for mitigation years 26–30 must be completed by mitigation year 25. At the end of mitigation year 25 (or 5 years before the expiration of the take authorization) the USFWS and the AIE will coordinate with applicable individual Permittees/COI-holders, respectively, to evaluate the amount of take for which mitigation has been provided through year 25 relative to the total amount of estimated take based on EoA modeling through year 30 (or the expiration date of the take authorization). If the evaluation indicates that there will be a deficit of mitigation relative to the total amount of estimated take through year 30 (or the expiration date of the take authorization), any additional mitigation to address the deficit must be completed by mitigation year 27 and any additional mitigation funding assurances that may be required will be provided in accordance with the provisions of Section 8.2.3.5.3.

At the conclusion of a facility’s final monitoring year, the actual mitigation completed will be compared to the total level of EoA estimated take over the term of the take authorization. If the final year evaluation indicates there is a mitigation deficit relative to the estimated take, additional mitigation sufficient to compensate for the deficit must be implemented. If the evaluation indicates there is not a mitigation deficit, the individual Permittee’s/COI-holder will be released from its financial assurance commitments. This process will ensure that mitigation is staying ahead of the take and will provide a buffer for the final 5-year increment when actual take numbers will not be known until after the take authorization has expired.
9.7.1.1.2 Up-Front Mitigation Based on the Take Authorization

All mitigation for the incidental take that is authorized over the term of an individual ITP or COI (up to 30 years) must be implemented within 3 years of impacting Covered Species habitat for new wind energy facilities and, for existing wind energy facilities, within 3 years of the time the take authorization is issued. Selection of this mitigation timing option reduces the risk for increased mitigation costs (e.g., cost increases associated with inflation or escalation in land acquisition costs) relative to implementing mitigation in phases over the term of the take authorization. This approach also offsets the uncertainty of implementing all of the mitigation in the early years of permit because it is expected that it will almost always result in significantly more mitigation being implemented than an incremental approach based on EoA take estimates.

9.7.1.2 Mitigation for Take of Covered Bird Species

As described in Section 9.4.4.1.3, each individual Permittee/COI-holder with a wind energy facility located in the Plan Area range of interior least tern and/or one or both of the piping plover populations (see Table 9-5) will be authorized for the take of one individual of each applicable species. Mitigation for take of interior least tern and either of the piping plover populations must be completed within the first 18 months of issuance of the take authorization. Individual Permittees/COI-holders may choose to implement all or a portion of their Kirtland’s warbler and bald eagle mitigation requirements; however, mitigation must, at a minimum, be implemented in a least 5-year increments immediately following issuance of their take authorization.

9.7.1.3 Mitigation for Indirect Impacts

The implementation of habitat restoration to mitigate indirect impacts on the covered bat species and Kirtland’s warbler associated with the removal of habitat must be implemented (i.e., tree planting stock has been planted) within 3 years of issuance of the take authorization.

9.7.2 Mitigation Procedures

Mitigation must be implemented in accordance with the mitigation timing schedule described in Section 9.7.1 and mitigation funding assurances must be provided in accordance with the funding assurances schedule in Section 8.2.3.5.3, regardless of whether the mitigation is implemented through the MIE or if mitigation is implemented by an individual Permittee/COI-holder.

9.7.2.1 Mitigation Provided by the MIE

Individual Permittees/COI-holders that elect to fulfill their mitigation obligations through the MIE must initiate coordination with the MIE to determine their mitigation fees (see Section 8.2.3.2) and to provide the necessary mitigation funding assurances in accordance with the
All MIE proposed mitigation sites must be approved by the USFWS before it can be credited under the MWE as mitigation. The USFWS’ approval of proposed mitigation sites will be based on a mitigation site description that will be prepared and submitted by the MIE to the USFWS and, if the mitigation is for a COI-holder, to the AIE. Proposed mitigation site descriptions will include, but not be limited to, the following information.

- Location and a description of the quantity of Covered Species habitat types present on the site and, if applicable, the estimated acreage available for restoration of Covered Species habitats.
- The estimated amount of authorized take that will be mitigated with acquisition of the site and subsequent restoration of habitat if applicable. The amount of mitigation provided for take of covered bat species will be calculated using the applicable REA models (see Appendix C).  
- The amount of impacts on occupied Covered Species habitats that will be mitigated with acquisition of the site and subsequent restoration of habitat if applicable. The amount of mitigation provided for impacts on occupied habitat will be calculated using the HEA methodology.
- Documentation based on existing information or results of mitigation site surveys demonstrating that the proposed mitigation site meets all of the applicable requirements described in Section 5.1.4.2.
- Documentation of land uses adjacent to the proposed mitigation site.
- Documentation that there are no existing easements or encumbrances on the site that are inconsistent with maintenance of the site as habitat for the intended Covered Species.

Following receipt of the mitigation site description, the USFWS will notify the MIE of its approval or denial of the proposed site with all reasonable effort within 30 days of receiving the description. USFWS will notify the MIE if additional information is necessary to evaluate a proposed mitigation site. The notification will specify the specific additional information requirements with an explanation of why the additional information is needed to complete the USFWS’s evaluation of the mitigation site. Acceptable methods for mitigation site acquisition are described in Section 9.7.2.4.

The MIE will prepare and submit a “Mitigation Site Plan” for approval to the USFWS. The Mitigation Site Plan may be submitted to the USFWS with the submittal of the mitigation site description or following approval of the mitigation site by the USFWS. The Mitigation Site Plan will include, but not be limited to, a description of the following items.

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7 The coordination time required between the MIE and individual Permittees/COI-holders to secure mitigation sites and determine mitigation fees will vary depending on the availability of unallocated MIE mitigation sites at the time an individual Permittee/COI-holder is required to implement mitigation.

8 As described in Sections 5.5.3, 5.5.6, and 5.5.7, respectively, mitigation for Kirtland’s warbler, interior least tern, and piping plover will be implemented by existing conservation programs with funding provided by individual Permittees/COI-holders.
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- A preliminary description of baseline conditions (as described in Section 5.2.3.3, 5.3.3.3, and 5.4.3.3, baseline condition surveys and the final description of baseline conditions will be prepared and submitted to the USFWS and the AIE, as applicable to the take authorization).
- Mitigation monitoring program and implementation schedule.
- Planned mitigation activities.

Mitigation Site Plans, including implementation cost estimates, must be submitted to the USFWS at least 60 days before mitigation activities are implemented.

9.7.2.2 Mitigation Provided by COI-Holders and Individual Permittees

9.7.2.2.1 Covered Bat Species Habitat Mitigation

Individual Permittees/COI-holders that elect to implement, monitor, and manage mitigation sites must only acquire mitigation sites approved by the USFWS. Once a proposed mitigation site has been identified, the individual Permittee/COI-holder will submit a description of the proposed mitigation site(s) to the USFWS. Proposed mitigation site descriptions will include the same information as required in proposed mitigation site descriptions prepared by the MIE (see Section 9.7.2.1). Following receipt of the mitigation site description, the USFWS will notify the project proponent of its approval or denial of the proposed site with all reasonable effort within 30 days of receiving the description. A proposed mitigation site will be approved if it meets the mitigation site acquisition requirements described in Section 5.1.4.2. If approved, the site may be acquired. If denied, the USFWS will provide the individual Permittee/COI-holder with the reasons why acquisition of the proposed site is denied. Acceptable methods for mitigation site acquisition are described in Section 9.7.2.3.

The individual Permittee/COI-holder must prepare and submit a Mitigation Site Plan for approval to the USFWS. The Mitigation Site Plan may be submitted to the USFWS with the submittal of the mitigation site description or following approval of the mitigation site by the USFWS. The Mitigation Site Plan must include, but is not limited to, a description of the following items.

- A preliminary description of baseline conditions (as described in Section 5.2.3.3, 5.3.3.3, and 5.4.3.3 baseline condition surveys and the final description of baseline conditions will be prepared and submitted to USFWS and the AIE, as applicable to the take authorization).
- Mitigation monitoring program and implementation schedule.
- Planned mitigation activities.

Mitigation Site Plans must be submitted to the USFWS at least 60 days before mitigation activities are implemented.
Mitigation credit that will be accorded for proposed habitat protection and restoration actions will be determined through application of the applicable covered bat species REA model in Appendix C.

9.7.2.2.2 Bald Eagle Mitigation

Individual Permittees/COI-holders must prepare a Mitigation Plan for each proposed mitigation action or group of actions for review and approval by the USFWS. Mitigation Plans for retrofitting or replacing power poles to reduce the risk of bald eagle electrocution must include, but is not limited to, the following items.

- The legal location and number of power poles to be retrofitted or replaced;
- A description of the pre- and post-mitigation power pole designs;
- The owner of the treated power line and signed agreement(s) providing for the maintenance of the retrofitted or replaced power poles;
- A description of the level of existing bald eagle electrocution risk associated with the mitigation power line (e.g., documentation of level of bald eagle use in the vicinity of the mitigation power line, documentation of bald eagle and other avian electrocutions associated with the mitigation power line, documentation of avian electrocutions associated with the pre-mitigation power pole design);
- Bald eagle REA electrocution model (see Appendix C) results indicating the amount of bald eagle take that will be mitigated; and
- A mitigation and power line maintenance schedule.

Mitigation credit that will be accorded for proposed power pole mitigation will be determined through application of the golden and bald eagle REA guidance provided in Appendix C.

9.7.2.2.3 Kirtland’s Warbler Mitigation to Reduce Nest Site Parasitism

Individual Permittees/COI-holders may provide Kirtland’s warbler mitigation by providing funding to existing USFWS-approved programs for controlling brown-head cowbirds. To receive mitigation credit for take of Kirtland’s warbler, the individual Permittee/COI-holder must provide a letter from a legal representative of the program indicating the mitigation funding received; a description of the proposed trapping activities and implementation schedules; proposed effectiveness monitoring activities and schedule; and confirmation that the funding received is adequate to support control and monitoring activities over the term of the mitigation.

Mitigation credit that will be provided to individual Permittees/COI-holders for implementing this mitigation option will be determined by the USFWS based on review of the proposed mitigation plan relative to the mitigation credit criteria described in Section 5.5.3.1.2.
9.7.2.2.4 Kirtland’s Warbler, Interior Least Tern, and Piping Plover Habitat Mitigation

Habitat mitigation for Kirtland’s warbler, interior least tern and piping plover (see Sections 5.5.3, 5.6.3, and 5.7.3, respectively) will be provided through the funding of nesting habitat restoration projects implemented by USFWS-approved conservation programs. To receive mitigation credit for take of these Covered Species, the individual Permittee/COI-holder must provide a letter from a legal representative of the conservation organization indicating the mitigation funding received, the acres of species nesting habitat that will be restored, scheduled date for completing the habitat restoration, monitoring activities, and confirmation that the funding received is adequate to support monitoring and the replacement of the habitat in the event of habitat loss through a flood or other event over the term of the take authorization.

9.7.2.3 Purchase of Mitigation Credits from USFWS-Approved Mitigation/Conservation Banks and In-Lieu Fee Programs

The mitigation requirements of individual Permittees/COI-holders described in Sections 9.7.2.2 may be satisfied with the purchase of Covered Species mitigation credits from USFWS-approved mitigation and conservation banks and in-lieu fee programs that are located in the state within which the wind energy facility is located.

9.7.2.4 Protection of Mitigation Sites

Mitigation sites will be acquired and protected in perpetuity by the Responsible Mitigation Entity, including conservation programs implementing mitigation for Kirtland’s warbler, interior least tern, and piping plover, through one of the following mechanisms.

- Purchase in fee title from willing sellers and protected under a permanent conservation easement (see Appendix H for an example conservation easement template) or other instruments (e.g., environmental covenants), as approved by the USFWS, that achieve the same level of protection.
- Acquisition of permanent conservation easements from willing sellers that agree to meet MWE habitat protection requirements (see Appendix H).
- Purchase of mitigation credits from private mitigation or conservation banks and in-lieu fee programs approved by the USFWS and that meet all of the mitigation requirements of the MWE, including mitigation site location requirements (see Section 5.1.4.2).

The transfer of mitigation lands and permanent conservation easements by the Responsible Mitigation Entity to third parties is permissible at any time if approved by the USFWS. The USFWS will only approve transfer of mitigation lands and conservation easements to a third party if provisions are in place assuring that all required MWE and take authorization requirements associated with the mitigation site will be implemented.
9.7.3 Post-MWE Disposition of Mitigation Sites

At any time before or at the time take authorizations expire for individual Permittees/COI-holders that have acquired and maintained mitigation sites, mitigation sites held in fee title and the responsibility for oversight of mitigation sites protected under conservation easements will be transferred to an entity approved by the USFWS (e.g., state conservation agencies, not for profit conservation organizations) that will be responsible for the protection of the mitigation sites in perpetuity. If a suitable entity is not identified to assume responsibility for a mitigation site, the responsibility for the mitigation site will remain with the individual Permittee and the AIE will be responsible for COI-holder mitigation sites. All mitigation sites administered by the MIE will similarly be transferred to one or more entities that will protect the mitigation sites in perpetuity. If a suitable entity is not identified to assume responsibility for a MIE mitigation site that mitigates take for an individual Permittee, the responsibility for the mitigation site will remain with the individual Permittee and the AIE will be responsible for COI-holder mitigation sites for which the MIE has provided the mitigation.

9.8 TRACKING OF TAKE

The USFWS will be responsible for compliance tracking of Covered Species take for take authorizations issued under the MWE. Information used in compliance tracking will be provided through the take compliance reporting requirements described in Section 9.10.1. The AIE will also track take of COI-holders and individual Permittees for planning purposes. Tracking of take includes, but is not limited to, maintaining the following records. As described in Section 9.10, all reported information, including documented fatalities of Covered Species and other native wildlife species, is available for public review.

- The acreage of occupied Covered Species habitats permanently and temporarily impacted by Covered Activities by each wind energy facility, cumulatively by state and cumulatively for the Plan Area. The AIE will prepare the cumulative summary of impacts based on the description of facility impacts in Annual Compliance Reports submitted to the AIE by COI-holders. The AIE will include the cumulative summary of impacts in its Annual Compliance Report to the USFWS. The USFWS will prepare and maintain a cumulative summary of habitat impacts provided in Annual Compliance Reports by individual Permittees (see Section 9.10.1).

- Reported fatalities of Covered Species that are positively identified, the number of estimated fatalities of each species based on evaluation of operations effectiveness monitoring results (see Section 7.3), and fatalities of other native species by wind energy facility, cumulatively by state and cumulatively for the Plan Area. Confirmed Covered Species fatalities will be reported directly to the USFWS by COI-holders and individual Permittees per the requirements described in Section 9.10.2.

- The level of Covered Species take authorized by individual Permittee/COI-holder by state. This information will be maintained by the USFWS based on take allocated in take
authorizations. The AIE will maintain this information based on take allocated in COIs and written notices from the USFWS of take allocated under ITPs. Tracking will also include any adjustments to take authorized in individual ITPs and COIs in response to triggering of an adaptive management action or changed circumstance.

- The level of take of Covered Species not yet allocated to project proponents. This information will be maintained by the USFWS and the AIE.

9.9 TRACKING OF MITIGATION

The USFWS will be responsible for tracking mitigation implemented by individual Permittees and mitigation that is implemented by the MIE under contract to individual Permittees. The AIE will be responsible for tracking mitigation directly implemented by COI-holders and mitigation implemented by the MIE on behalf of COI-holders. The USFWS is responsible for tracking all mitigation Plan Area-wide based on information provided by individual Permittees and the AIE in their Annual Compliance Reports (see Section 9.10.1).

9.9.1 Habitat Mitigation

Tracking of habitat mitigation includes, but is not limited to, maintaining the following records.

- Mitigation Site Plans.
- The legal location description of each mitigation site.
- For each Covered Species, the level of take that is mitigated by each mitigation site and the amount of mitigation credit accorded to each wind energy facility using the site.
- The entity responsible for managing and maintaining each mitigation site.
- Mitigation site baseline conditions reports (see Sections 5.2.3.3, 5.3.3.3, and 5.4.3.3).
- A description of habitat restoration, enhancement, and management actions implemented in each mitigation site (provided in Annual Compliance Reports).
- Results of mitigation monitoring for each mitigation site (provided in Annual Compliance Reports).
- Actual implementation costs of MIE implemented mitigation (provided in MIE Annual Compliance Reports described in Section 9.10.1).
- An accounting for each individual Permittee/COI-holder provided mitigation that is implemented relative to compliance with the mitigation timing requirements (see Section 9.7.1) and the balance of mitigation that is due to be implemented by each individual Permittee/COI-holder relative to the mitigation timing requirements.
• Changed circumstances that are declared for each mitigation site and a description of actions implemented to address the changed circumstance (provided in Annual Compliance Reports as described in Section 9.10.1).

• An accounting of MIE changed circumstances fund expenditures and balances by mitigation site and wind energy facility for use in determining changed circumstances fund replenishment requirements, if needed, for individual wind energy facility (see Section 8.2.3.2).

9.9.2 Mitigation to Reduce Bald Eagle Mortalities

Tracking of mitigation provided through the retrofitting or replacement of power poles and through the implementation of actions to reduce lead ingestion by bald eagles includes, but is not limited to, maintaining the following records.

• Bald eagle mitigation plans.

• The legal location and number of power poles annually and cumulatively retrofitted or replaced for each mitigation effort.

• The legal location searched for large animal carcasses and the annual and cumulative number of carcasses removed for each mitigation effort.

• The geographic area within which lead-free ammunition is distributed and the annual and cumulative amounts of ammunition distributed by mitigation effort.

• Individual Permittee/COI-holder agreements with electric power companies, landowners, and/or resource agencies.

• The level of take that is mitigated by each mitigation effort.

9.9.3 Mitigation Implemented by Third Parties

Tracking of mitigation provided for Kirtland’s warbler, interior least tern, and piping plover (see Sections 5.5.3, 5.6.3, and 5.7.3, respectively) under contract to conservation programs includes, but is not limited to, maintaining the following records.

• Individual Permittee/COI-holder contracts with USFWS-approved conservation programs.

• The legal location description of each mitigation site.

• The entity responsible for managing and maintaining each mitigation site.

• The level of take that is mitigated by each mitigation site, by wind energy facility, if applicable.

• Results of mitigation monitoring for each mitigation site (provided in Annual Compliance Reports).
9.9.4 Tracking of Purchased Mitigation Credits

As described in Section 9.7.2.3, individual Permittees/COI-holders may purchase mitigation credits from USFWS-approved private mitigation or conservation banks and in-lieu fee programs. Tracking of purchased mitigation credits includes, but is not limited to, maintaining the following records.

- The name of the organization from which credits are purchased by individual Permittee/COI-holder.
- USFWS agreements with the organization authorizing the sale of the applicable mitigation credits.
- The number and type of mitigation credits purchased by each individual Permittee/COI-holder annually and cumulatively.

9.10 COMPLIANCE REPORTING REQUIREMENTS

Individual Permittees, the AIE, COI-holders, and the MIE must prepare an Annual Compliance Report following each implementation year to demonstrate, as applicable to the entity, compliance with the MWE and terms and conditions of take authorizations. Other reporting requirements include the reporting of Covered Species and other native wildlife species fatalities, potential changed or unforeseen circumstances, and exceedance of adaptive management triggers to the USFWS. All compliance reporting information, including documented fatalities of Covered Species and other native wildlife species, is available for public review.

These documents will provide the information necessary to enable the USFWS to assess on an ongoing basis the progress and performance of the MWE toward meeting the MWE biological goals and objectives, and to make informed decisions regarding MWE implementation.

Following approval of the MWE, it is anticipated that the AIE will develop a standardized process for COI-holders’ reporting of compliance-related information to the AIE and that the USFWS will develop a standardized process for individual Permittees’ and MIE’s reporting of compliance-related information to the USFWS.

9.10.1 Annual Compliance Reports

Individual Permittees will prepare and submit Annual Compliance Reports to the USFWS for each implementation year. COI-holders and the MIE will submit Annual Compliance Reports to the AIE for each implementation year. An implementation year extends from January 1 to December 31. Annual Compliance Reports will be submitted to the applicable entity by February 28 following completion of the implementation year. The AIE will maintain the COI-holder Annual Compliance Reports submitted to the AIE over the term of the MWE. The AIE will compile and summarize COI-holder Annual Compliance Reports into a single AIE Annual Compliance Report for submittal to the USFWS Region 3 office, the Plan Area USFWS Field
Offices, and state wildlife agencies in which COI wind energy facilities are located by March 30 following completion of the implementation year. The AIE will provide individual COI-holder Annual Compliance Reports to the USFWS upon receipt of a written request from the USFWS.

Annual Compliance Reports will address, but not be limited to, the following reporting components described in the following subsections. Annual Compliance Reports prepared by the AIE will address these components by COI-holder. Annual Compliance Reports prepared by the MIE will address these components by COI-holder and individual Permittee.

### 9.10.1.1 Mitigation-Related Compliance Reporting

The following mitigation-related compliance elements of Annual Compliance Reports will be included, as applicable, in Annual Compliance Reports prepared by individual Permittees/COI-holders and the MIE that are implementing mitigation.

1. A description of the mitigation implemented in the reporting year in relationship to the requirements for the timing of mitigation actions relative to the timing of take of Covered Species (see Section 9.7.1).

2. A summary of the completed or in-progress mitigation activities, including information related to type, extent, and location of restored and protected habitats and a description of the level of mitigation credit provided. The report will document, on an annual and cumulative basis, the mitigation actions implemented to date.

3. A summary of all land management activities undertaken on MWE mitigation sites and site-specific management issues encountered, as applicable, by the MIE, COI-holder, and individual Permittee during the reporting year.

4. A description of mitigation activities that have not been implemented in accordance with the mitigation schedule requirements in Section 9.7.1 (i.e., behind schedule) and an explanation for the deviation from the schedule and method of remediation.

5. The mitigation-related compliance, effectiveness, and effects monitoring information required in Section 7.4.4.

6. An annual and cumulative summary of all mitigation and monitoring activities and results implemented by USFWS-approved conservation programs that are implementing Kirtland’s warbler, interior least tern, and/or piping plover mitigation of behalf of individual Permittees/COI-holders.

7. The name of the USFWS-approved organization(s) from which mitigation credits have been purchased and an annual and cumulative summary of purchased mitigation credits by Covered Species.

8. An annual and cumulative summary to date of documented Covered Species and other native wildlife species fatalities (see Section 9.10.2).
9. A description of any instances of noncompliance with the provisions of the MWE mitigation-related requirements and, as applicable, to the ITP, COI, or MIE.

10. For COI-holders, documentation of the mitigation-related funding assurances provided to the AIE (see Section 8.2.3.5.2).

11. A description of the results of individual Permittee and AIE mitigation funding assurances reviews and any resulting augmentation of funding assurances (see Section 8.2.3.5).

The MIE will also include:

1. A summary of actual mitigation acquisition, habitat restoration management, and management costs of each mitigation site for use in adjusting mitigation fees in accordance with the provisions of Section 8.2.3.2.2.

2. A description of any potential for non-compliance with implementing mitigation in accordance with the mitigation timing requirements (see Section 9.7.1).

9.10.1.2 Wind Energy Facility-Related Compliance Reporting

The following wind energy facility-related compliance elements of Annual Compliance Reports will be included in the Annual Compliance Reports prepared by individual Permittees/COI-holders.

1. A description of Covered Activities implemented (i.e., construction, operations and maintenance, decommissioning, reclamation, repowering). The description will include documentation of the AMMs that were implemented during the reporting year (see reporting requirements in Sections 7.2 and 7.3).

2. A description of repowering and decommissioning BMPs (see Sections 5.1.3.3.3 and 5.1.3.3.4) that were implemented during the reporting year.

3. The siting, design, and construction compliance monitoring information required in Section 7.2.2.

4. The operations-related compliance, effectiveness, and effects monitoring information required in Section 7.3.4.

5. A cumulative accounting to date of all facility impacts (i.e., area and type of suitable and known occupied habitat of Covered Species affected, detected Covered Species fatalities, fatalities of non-Covered Species, and EoA software estimated take of Covered Species).

6. A description of changed circumstances and actions to respond to changed circumstances (see Section 8.4), including the following:
   o A description of the changed circumstance and its effects on Covered Species.
- A description of the actions taken to address the changed circumstance and the effectiveness of those actions.
- If applicable, methods and results of monitoring conducted to evaluate the effectiveness of implemented changed circumstance actions.
- Outcomes of actions to address changed circumstances from earlier years.

7. A description of any unforeseen circumstances occurrences and responses (see Section 8.3).

8. A description of any instances of noncompliance with the provisions of the MWE and, as applicable, with the Master Permit, COI, or individual ITP.

9. For COI-holders, documentation of the operations effectiveness monitoring and adaptive management funding assurances provided to the AIE (see Section 8.2.2.2).

9.10.1.3 Changes and Amendments to the MWE and Take Authorizations

Annual Compliance Reports prepared by individual Permittees and the AIE will include a summary of any minor amendments to the MWE and take authorizations proposed or approved during the implementation year (see Section 8.6.2).

9.10.2 Reporting of Covered Species Fatalities

Individual Permittees/COI-holders must report any detected fatality of a Covered Species to the USFWS within 2 business days of the detection of a confirmed fatality, including the date, species, and, if determinable, the age and sex of the fatality. If necessary, fatalities will be confirmed by a USFWS-approved species expert or genetic testing. The USFWS will provide instructions for the disposition of the carcasses. Confirmed fatalities are public information and must also be reported in Annual Compliance Reports as described in Section 9.10.1.

9.10.3 Reporting of Changed Circumstances, Unforeseen Circumstances, and Adaptive Management Actions

Individual Permittees, the AIE and the MIE for individual Permittee mitigation sites must report any occurrence of an unforeseen circumstance or changed circumstance to the USFWS within 5 business days of the detection of the potential occurrence (see Sections 8.3 and 8.4, respectively). COI-holders and the MIE for COI-holder mitigation sites must report the occurrence of an unforeseen or changed circumstance to the AIE within 3 business days.

The implementation of an adaptive management action described in Sections 7.3.3 and 7.4.3 will be reported by individual Permittees and the AIE to the USFWS within 2 business days of exceeding the adaptive management trigger. The detection and disposition of occurrences of changed circumstances and unforeseen circumstances, and implementation of adaptive
management actions, will also be reported in Annual Compliance Reports as described in Section 9.10.1.

9.10.4 Reporting of Deviations in Adherence with Operations-Related AMMs

In the event of a detected instance of noncompliance with the operations-related AMMs described in Chapter 5 for each of the covered bat species and Kirtland’s warbler (e.g., as a result of operations systems failure), the individual Permittee/COI-holder will immediately feather the noncompliant wind turbines and will notify the USFWS within 2 business days of the detection. The individual Permittee or the AIE, as applicable, must coordinate with the USFWS to remedy the cause of the failure. Once the cause of the failure has been addressed, the affected wind turbine(s) may resume operations. Occurrences of noncompliance with the operations-related AMMs will also be reported in Annual Compliance Reports as described in Section 9.10.1.

9.10.5 Reporting Deviations in Adherence with Siting, Design, and Construction-Related AMMs

In the event that an individual Permittee/COI-holder must deviate from the siting, design, and construction-related AMMs as described in the project proponent’s Facility-Specific Plan or COI Application (see Sections 9.4.1 and 9.4.2, respectively), the individual Permittee or AIE, as applicable, will notify and receive the approval of the USFWS for the proposed modification before its implementation. The individual Permittee or AIE will coordinate with the USFWS to implement actions that will remedy any adverse effects of the deviation.

9.10.6 Reporting the Potential for MIE Failure to Meet Mitigation Timing Requirements

The MIE will notify the USFWS within 5 business days if the MIE discovers that it is unable to comply through good faith effort with the timing requirements for implementing mitigation (see Section 9.7.1) on behalf of one or more individual Permittees or COI-holders. The MIE will similarly notify the AIE for any of its affected COI-holder mitigation commitments and the affected individual Permittees for its contracted commitments. The notifications will include an explanation for the anticipated non-compliance, a description of the individual Permittee/COI-holder mitigation obligations that are at risk, and potential solutions for either avoiding non-compliance or steps that could be implemented to ensure that the mitigation will be implemented as soon as possible following a failure to meet timing requirements.

9.11 Enforcement of Terms and Conditions of Take Authorizations

The USFWS is directly responsible for enforcing the AIE’s and individual Permittee compliance with the requirements of the MWE and the terms and conditions of the Master Permit and
individual ITPs, respectively. The provisions that provide for the USFWS’s suspension or revocation of Master Permits and ITPs are described in Section 8.7.

The AIE is directly responsible for enforcing COI-holder compliance with the requirements of the MWE and the terms and conditions of COIs through its Participation Agreements. On becoming aware of an instance of non-compliance, the AIE will notify the USFWS and the COI-holder of the violation. The AIE will coordinate with the COI-holder to immediately bring the wind energy facility into compliance and may suspend the COI until such time as the COI-holder becomes compliant. If a COI-holder fails to implement the remedy within the time allotted by the AIE, the COI will be relinquished, suspended or revoked and, depending on the nature of the violation, the AIE may seek enforcement of a remedy through civil action under the provisions of the Participation Agreement. In addition, the MWE provides the USFWS with the authority to directly enforce compliance by the COI-holder, including suspending or revoking the COI as described in Section 8.7. The USFWS also maintains the authority to suspend or revoke the Master Permit for failure of the AIE to effectively enforce compliance by COI-holders.

9.12 **COMPREHENSIVE MWE IMPLEMENTATION STATUS REVIEWS**

The USFWS, in coordination with the individual Permittees, AIE, and the MIE will conduct a joint comprehensive status review of MWE implementation after the first 5 years following approval of the MWE (see Section 1.5) and every 5 years thereafter over the term of the MWE. At any time, however, the USFWS, an individual Permittee, AIE, or the MIE may request an interim status review to address any issues requiring earlier discussion. Concurrence of the USFWS and AIE is required for any interim status review. The MIE may request interim status reviews and shall participate in any portion of a status review relating to its responsibilities under the MWE, but its concurrence or participation is not otherwise required.

Status reviews may address one or more of the MWE implementation elements identified below. The level of effort required to conduct each status review will vary with the degree of change in Plan Area conditions, availability of new information relevant to MWE implementation, and other factors that could affect implementation procedures over the course of the period under review. The USFWS will be responsible for coordinating each status review and the need to conduct any 5 year status review may be waived with the concurrence of the USFWS and AIE.

The purpose of these status reviews is to provide the USFWS, individual Permittees, AIE, and MIE with a collaborative, methodical process to periodically evaluate the effectiveness of MWE implementation procedures. Results of comprehensive status reviews will be used to determine if the parties agree that adjustments should be made to MWE implementation procedures and approaches to mitigation, monitoring, and adaptive management through the minor amendment process described in Section 8.6.2.1.
MWE implementation elements subject to status reviews include, but are not limited to, the following:

- The efficacy of MWE implementation in meeting the biological goals and objectives (see Chapter 5);
- Monitoring protocols and requirements (see Sections 7.2, 7.3, and 7.4);
- Survey protocols and requirements (see Section 5.1.2);
- The effectiveness of habitat mitigation stacking ratios (see Section 5.1.4.1);
- The efficacy of using the Evidence of Absence method for estimating take based on monitoring results (see Section 7.3.2);
- The effectiveness of methods used to estimate facility-specific take estimates (see Sections 9.4.4.1 and 9.4.4.2);
- The effectiveness of REA models (see Appendix C) and other methods used to calculate mitigation requirements and level of take offset by proposed mitigation actions;
- Mitigation options and approaches to habitat restoration (see Sections 5.2-5.8);
- Adaptive management actions (see Sections 7.3.3 and 7.4.3);
- Adjustments in AMM and BMP requirements (see Section 5.1.3 and Sections 5.2-5.8);
- The use of deterrents or other measures approved by the USFWS that will reduce take of Covered Species.
- Annual Compliance Report format and content (see Section 9.10.1); and
- Guidelines for screening and evaluating lands under consideration for protection (see Section 5.1.4.2).

Following each status review, the USFWS in coordination with the, participating individual Permittees, AIE, and the MIE will prepare a document summarizing the results of the status review and recommended corrective actions and supporting information. Comprehensive MWE Implementation Status Review reports will be distributed by the AIE to the USFWS, each individual Permittee, and the MIE.

Proposed revisions to MWE elements subject to status reviews may only be incorporated as conditions of the MWE through the minor amendment process described in Section 8.6.2 if (1) the USFWS, individual Permittees, and the AIE agree to adopt the proposed revision(s) and (2) the proposed revision(s) meet the criteria described in Section 8.6.2.1 for implementing a minor amendment. Any proposed revision(s) that does not meet these requirements will either not be implemented or must be adopted through the major amendment process described in Section 8.6.3.