

U.S. Fish and Wildlife Service, Region 6, Migratory Bird Management Office,  
Recommended Approach for Development and Submission of  
Eagle Conservation Plans in support of an Eagle Incidental Take Permit Application for  
Wind Energy Projects.

March 31, 2021, Version 3.0

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**Introduction:** U.S. Fish and Wildlife Service (USFWS) Migratory Bird Management Office (MBMO) and USFWS Ecological Services Field Offices (ESFO) in Region 6, have been jointly reviewing Eagle Conservation Plans (ECPs) submitted to USFWS in support of Eagle Incidental Take Permits (EITPs) for eagle take authorization at wind energy facilities that are already operational, or that are being constructed, in Region 6 states (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Nebraska, and Kansas). These applicants are seeking EITPs for their wind energy projects pursuant to the Bald and Golden Eagle Protection Act (BGEPA) and its implementing regulations (CFR Title 50, Part 22). This ECP review process has been ongoing in Region 6 for at least five years. Based on this collective experience we present a new recommended and preferred approach to development of ECPs written and submitted by wind energy companies applying to USFWS, Region 6 for EITPs. Our intent in developing this new ECP guidance, is to make the ECP development and EITP application submission process go more quickly and efficiently, and to eliminate unnecessary work and expense by our EITP applicants. Also, adopting this new, voluntary approach to ECPs will allow USFWS to get to our National Environmental Policy Act (NEPA) compliance work on these EITP applications much more quickly, another benefit for the applicant. **A key caveat with this new ECP process is that the EITP applicant must engage USFWS, and work with us to develop and apply avoidance and minimizations measures for the wind energy project, to the maximum extent practicable, as early on in the project development process as possible, and prior to submission of the ECP.** The BGEPA 22.26 permit regulations (CFR Title 50, Part 22) for EITPs do not specify what the contents of an ECP should be. Hence, there is latitude for USFWS Regions responsible for administering EITPs in terms of how this process occurs. The major purpose of this USFWS, Region 6, MBMO guidance memo is to reduce the ECP process to only those items necessary for USFWS: 1) to conclude that the ECP is sufficient to support the EITP application; 2) that we have all information necessary for review of the application, including all relevant eagle data for our project analysis; 3) and that we have what we need to complete our required NEPA compliance, relative to any USFWS decision about whether or not to issue an EITP to a wind energy facility in Region 6. Last, this guidance and recommended process replaces and supersedes our previous USFWS, Region 6, Mountain-Prairie Region ECP guidance memo issued in 2013 entitled *“Final Outline and Components of an Eagle Conservation Plan (ECP) for Wind Development: Recommendations from USFWS, Region 6”*.

**A. The following are all the items USFWS, Region 6, MBMO recommends that entities applying for EITPs for wind energy facilities include in an ECP, or submit to USFWS, as part of the permit application process:**

1. Provide a statement that the ECP was prepared to support an application for an EITP for a wind energy facility, the name of the facility, and relevant company/subsidiary names of the applicant/owner/operator.
2. Provide a map showing the location of the wind energy facility that USFWS can use for our NEPA document.
3. Provide a statement indicating how many years the applicant is requesting eagle take for. Note that per the USFWS 2016 Revised Eagle Rule (FRN Vol 81, 91494) all applications for EITPs submitted after July 14, 2017 will be processed under the 2016 BGEPA regulations.
4. Endangered Species Act Compliance:  
If a wind project will result in adverse effects to federally listed species (wildlife, fish, and plants) and/or critical habitat (designated or proposed), consultation with USFWS Ecological Services Division will be required under either section 7 or section 10 of the Endangered Species Act (ESA). For projects where this is necessary, it is essential that wind energy project operators or developers complete this analysis and resolve any project ESA-related issues with an Ecological Services Field Office (ESFO) as early in the project coordination process as possible. Work with the ESFO in the state where the wind project will be built or is already operating to complete this required ESA consultation. Ideally, this ESA compliance work (for projects where necessary) should be completed in advance of seeking an EITP. If not then this presents a challenge for USFWS, Region 6, MBMO since wind project design or operational modifications may result from the ESA consultation process with USFWS ESFO's that also could affect eagles. Failure to complete any required ESA consultation for a wind energy project in advance of working with the USFWS, Region 6, MBMO on an EITP will likely result in delays in the EITP process. For example, if, as a result of ESA consultation with a USFWS ESFO, a wind project turbine layout has to be modified (e.g. remove several wind turbines or move them to a new location within the project area), the project changes to comply with ESA also may affect risk of take of eagles differently (either increasing or decreasing such risk and associated estimates of eagle take for the project). Thus we strongly encourage a wind project developer to complete any required ESA consultation before engaging the USFWS, Region 6, MBMO with a wind turbine layout as part of the EITP process. This also might potentially apply to an operational wind project if ESA consultations were to result in key modifications to original operating procedures. After required consultation on ESA-related issues is completed for the project, provide USFWS, Region 6, MBMO with documentation that the required ESA consultation work has been completed and include documentation in the ECP that this is completed. Alternately, if the wind energy project will not result in take of listed wildlife, fish, or plants, or adversely modify critical habitat for listed species (designated or proposed), pursuant to the ESA, provide a statement with the ECP submission documenting this.

5. Department of Defense and Federal Aviation Administration:

The Department of Defense (DoD) may have concerns about a wind energy project in relation to wind turbines creating interference with DoD radar systems at DoD installations. DoD concerns about wind turbine interference with DoD radar systems includes DoD installations such as Air Force Bases, U.S. Army Bases, missile sites, etc. Similarly, the Federal Aviation Administration may have concerns about wind turbine interference with radar systems at civil or commercial airports. All wind project developers that are building facilities in proximity to DoD or FAA-regulated facilities are strongly encouraged to coordinate and consult with both entities early in the project development process to ensure that DoD and/or FAA concerns are resolved. If such coordination with DoD and/or FAA is not completed early, this may present a challenge for USFWS, Region 6, MBMO since wind project design changes may result from the coordination with DoD and/or FAA that also could affect eagles. Failure to complete consultation for a wind energy project in advance of working with the USFWS, Region 6, MBMO on an EITP will likely result in delays in the EITP process. For example if as a result of consultation with DoD and FAA a wind project turbine layout has to be modified (e.g. remove several wind turbines or move them to a new location within the project area) the project changes to address the concerns of DoD and FAA also may affect risk of take of eagles differently (either increasing or decreasing such risk and associated estimates of eagle take for the project by USFWS). For new wind projects that are being developed we recommend that consultations with DoD and FAA, where applicable, are all completed before the wind company brings forward a turbine layout to work with USFWS on an EITP for the project. Work on an EITP with USFWS, Region 6, MBMO will be most efficient for both party's when USFWS can begin with a project wind turbine layout that already fully incorporates all design changes resulting from consultation with DoD and FAA. For both new wind projects under development, and wind facilities that are already operational, the final project ECP must provide documentation that DoD, FAA, or both have been coordinated and consulted with on the project. The final ECP for new or online wind facilities also must document that either DoD and FAA had no concerns for the project, or that if there were DoD and FAA concerns, that all such issues have been resolved.

6. Project Description:

The project description should include a list of all infrastructure for the project (i.e., wind turbines, roads, power lines, meteorological towers, substations, O&M building, etc.). Quantify how much of each project component will be built. For wind turbines: how many are there, what is the rotor diameter(s), total megawatts of the project, tower height, and total height with tower? Also include information about the wind turbine models the project will use for construction in terms of their rotor slowdown characteristics or time to feathering or shutdown. This will be key information if the wind project proposes or later adopts a conservation measure of using turbine curtailment to reduce or prevent eagle take. For roads and power lines: how many miles of each will be constructed? The power line description also should include the voltage of the lines and whether the lines will be constructed above or below ground. Also, for any new power line construction include a statement that indicates whether or not they will be constructed following the Avian Power Line Interaction Committee (APLIC) 2006 Suggested Practices for Avian Protection on Power Lines and the 2012 Reducing Avian Collisions with Power Lines APLIC manuals. Provide map(s) that clearly shows the

location of all the project infrastructure. All maps should be provided as both PDF versions and as GIS shape files. Note that changes in this information as the project moves forward will likely necessitate a delay in USFWS action on the application.

7. Eagle Data for the Project:

Submit copies of all eagle data collected for the project. If there were both bald and golden eagles documented at the project, break out the responsive results and data by eagle species. This includes eagle use surveys, eagle roost surveys, eagle nest surveys, eagle migration surveys, eagle prey base surveys, eagle mortality monitoring, machine vision derived data, etc. If there was no eagle roosting habitat, or the project was not located in an eagle migration corridor, such that these surveys were not needed, then note this in the submission. At a minimum, provide a listing of the types of pre-construction monitoring conducted as well as the start and end dates for each type of survey, how many total surveys of each type were conducted, when surveys were conducted (specific dates), a written description of the protocols used to conduct each survey type (this can be in a consultants monitoring report, etc.), and figures that clearly show the sample points or the survey area used for the surveys. If the wind project is already operational include all the same items listed above for all post-construction surveys that were conducted. Note: Some of the other questions USFWS, Region 6 asks applicants for EITP's to provide in this ECP guidance memo, such as question 10 (Compensatory Mitigation) and question 11 (Adaptive Management), cannot be answered until after USFWS has received the eagle data for the wind project and analyzed it to determine a USFWS eagle take estimate for the project. Therefore, USFWS, Region 6 strongly encourages applicants for EITP's to submit all their project-related eagle data to us at least 2 to 3 months before submitting their ECP's and EITP applications.

- For pre-construction eagle use surveys: These eagle use survey data should be submitted using the USFWS EAIT Data Reporting Template (an Excel spreadsheet designed for this purpose and available from USFWS). For the eagle use surveys, complete the EAIT Data Reporting Template tabs that apply to this survey type. The data submission should include a record of all the surveys conducted, and the results from all the surveys including the flight paths or perch locations for all eagles recorded and a base map for the project area which shows both. Provide an estimate of the project area (percentage) surveyed by eagle use survey efforts. Provide a written protocol describing how the pre-construction eagle use surveys were conducted (this can be in a consultants monitoring report, etc.). All maps should be provided as both PDF versions and as GIS shape files. If a report was prepared that included the eagle use survey work include a copy of this with the ECP submission.
- For eagle nest surveys: Include a map showing the buffer around the project where surveys were conducted, and the location of all eagle nests found (both in-use and alternate nests). Regarding survey results for all eagle nests documented as in-use, provide information on occupancy, productivity, and nest success to the extent this information was recorded. An in-use eagle nest means a bald or golden eagle nest characterized by the presence of one or more eggs, dependent young, or adult eagles on the nest in the past 10 days during the breeding season per the definition provided in the USFWS 2016 Revised Eagle Rule (FRN Vol 81, 91494). This information should be

summarized in a data table to be included with the submission. If a mean inter-nest distance was calculated for the project, provide this by eagle species and clearly indicate what nests were used to do the calculation and which year(s) of survey effort was used for the calculation (per USFWS 2013, Eagle Conservation Plan Guidance, Appendix H). Also, indicate whether or not the eagle nest surveys conducted for the wind project were consistent with the USFWS, Region 6, MBMO recommended protocol for conducting these surveys. All maps should be provided as both PDF versions and as GIS shape files. If a report was prepared that included the eagle nest survey work include a copy of this with the ECP submission.

- For eagle roosts include a map of the project area showing the locations of all documented roosts. If surveys were conducted to locate suitable eagle roosting habitat and then subsequently to determine whether or not this habitat was used for roosting, or to determine if a known documented eagle roost in the project area was used by eagles, provide the written protocols for how these surveys were conducted, a listing of all the surveys conducted by date, and the survey results. All maps should be provided as both PDF versions and as GIS shape files. If a report was prepared that included the eagle roost survey work include a copy of this with the ECP submission.

For concentrated areas or sources of eagle prey base such as prairie dog colonies and sage or sharp-tailed grouse or prairie chicken leks, include a map of the project area showing all such locations. If surveys were conducted for prairie dog colonies and sage or sharp-tailed grouse or prairie chicken leks, provide the written protocols for how these surveys were conducted, a listing of all the surveys conducted by date, and the survey results. Indicate the specific prey species the surveys were conducted for. If there are big game parturition (birthing) areas located within the project area provide a map that shows where these were located. For domestic livestock, clearly indicate which type of livestock are present (i.e. cattle, sheep, horses, or some combination thereof). Also, if there are lambing or calving areas within the project area, provide the location of each, and how many such lambing or calving areas there are. All maps should be provided as both PDF versions and as GIS shape files. If a report was prepared that included the eagle prey base assessment work include a copy of this with the ECP submission.

- For eagle migration, include a map of the project area showing the locations of any eagle migration corridor in relation to the facility. If eagle migration surveys were conducted for the project area, provide the written protocols for how these surveys were conducted, a listing of all the surveys conducted by date, and the survey results. Provide maps that document eagle migration survey results as both PDF versions and as GIS shape files. If a report was prepared that included the eagle migration survey work include a copy of this with the ECP submission.
- For post-construction eagle mortality monitoring surveys: If the project is already operational, provide a written protocol describing how the surveys were conducted (this can be in a consultants monitoring report, etc.). Results from the post-construction

mortality monitoring surveys should also be submitted using the USFWS EAIT Data Reporting Template (an Excel spreadsheet designed for this purpose and available from USFWS). For the eagle mortality monitoring surveys, complete the EAIT Data Reporting Template tabs that apply to this survey type. This submission should include the records of all the mortality monitoring surveys conducted, including date of each survey and survey results. It also should include all results from bias trials (both searcher efficiency and carcass persistence) conducted as part of the mortality monitoring surveys (where completed). Include definitions for the survey seasons used to complete the eagle mortality monitoring. Provide a map that shows where the surveys were conducted. If the wind energy project has killed or injured eagles, provide a table listing all these mortalities/injuries. This table should include the eagle species, number of eagles, and the date each incident was documented. Also indicate whether each eagle was found incidentally to project operations or whether it was found during scheduled mortality monitoring surveys. For each documented eagle mortality/injury, include all the fields shown on page 97 of Appendix H of the USFWS Eagle Conservation Plan Guidance (USFWS 2013) to the extent possible. Also provide a map of the project wind turbine layout showing the wind turbine identification number and the location of all eagle mortalities or injuries. Also, for incidental eagle mortality finds provide documentation of how these were handled relative to the bias trials. All maps should be provided as both PDF versions and as GIS shape files. If a report was prepared for that included the post- construction mortality monitoring work include a copy of this with the ECP submission.

8. Avoidance and Minimization Measures Implemented for the Project:

There needs to be avoidance and minimization discussions between the EITP applicant and USFWS, Region 6. These discussions are a very important step in the permit process. This ties to a requirement in the BGEPA 22.26 permit regulations (CFR Title 50, Part 22) that USFWS must find that the EITP applicant has applied all appropriate and practicable avoidance and minimization measures, to reduce impacts to eagles, before a take permit can be issued. This step should be completed well in advance of the submission of an EITP application by a wind company to USFWS, Region 6, MBMO. Typically, these discussions should occur after the eagle data collection for the project is completed, although in some cases they could occur before the eagle survey work is completed. Information provided by eagle surveys for the project are highly important in informing the number and types of avoidance and minimization measures that USFWS, Region 6 will recommend for the wind project. These avoidance and minimization discussions are especially important for wind projects that are still in the planning stages and that have not yet been constructed. From the USFWS, Region 6 perspective, our best opportunity to achieve eagle risk reduction for a wind energy project is in the stages where we can provide input on project siting, micrositing of wind turbines, etc. Our USFWS, Region 6 recommendations to a company for a wind project may include moving the project to a different location, eliminating specific wind turbines, relocating wind turbines, seasonal curtailment of specific turbines, etc. For wind energy projects that are already constructed and operational there will be fewer opportunities to implement avoidance and minimization recommendations, hence these discussions are more constrained. Nevertheless, even for online wind facilities these avoidance and minimization discussions will still need to occur. With the ECP submission,

provide documentation of all avoidance and minimization measures provided by the USFWS, Region 6 for the wind project. USFWS, Region 6 conservation measures will be provided for the project during avoidance and minimization discussions with the wind project proponent. State which of the avoidance and minimization measures provided by USFWS, Region 6 were implemented for the project. For those avoidance and minimization measures provided by USFWS that could not be implemented for the wind project, list these items, and provide documentation as to the reason(s) why they could not be implemented.

9. Eagle Conservation Measures for the Project:

Provide a list of all conservation measures (pre-construction, construction, and post-construction) that were or will be specifically implemented to reduce risk to eagles associated with the project. The Best Management Practices (BMPs) included in Chapter 7 of the USFWS, Land-based Wind Energy Guidelines (USFWS, 2012) should be implemented at wind energy projects to benefit wildlife and wildlife habitat generally. However, many of these BMPs, such as using appropriate erosion control in project construction and operation to control or minimize runoff into water bodies, do not provide any direct conservation benefit to eagles. Hence, they should not be included with the ECP submission. If the EITP applicants elects to also develop a separate Bird and Bat Conservation Strategy for their wind facility this information should be included in this document. We recommend that ECP only include those measures that provide a direct conservation benefit to eagles, such as a measure establishing that all big game and livestock carcasses will be removed or tarped (covered and secured under a tarp until they can be removed; so they are not available to eagles) from the wind facility within 24 hours of their discovery.

10. Compensatory Mitigation:

For wind projects that will include take of golden eagles, provide a statement in the ECP indicating that all predicted golden eagle takes for the initial phase of the project will be offset through compensatory mitigation. In such cases the statement needs to clearly state a commitment from the applicant to completing all required compensatory mitigation. At present the only compensatory mitigation method for which the USFWS has developed a Resource Equivalency Analysis (REA) to establish mitigation credits is power pole retrofits. USFWS does not have the resources to develop other REAs for other mitigation methods, at this time. However, should other credible REAs be developed for other types of mitigation alternatives (roadside carcass removal, lead abatement, conservation easements, etc.) in the future, USFWS would accept these other methods for the compensatory mitigation requirement. In these cases, the EITP applicant would need to first submit the REA for the alternative compensatory mitigation method to USFWS. Then the REA associated with the alternative compensatory mitigation method would need to be reviewed by USFWS, a Department of the Interior (DOI) economist, and DOI Solicitors. If following this review the USFWS finds that the REA provides the necessary documentation that the alternative compensatory mitigation method is credible, then we will accept this alternate mitigation method for the required compensatory mitigation under an EITP to offset take of eagles. Include a statement with the ECP submission indicating that a power pole retrofit plan will be developed for the project to meet the compensatory mitigation requirements, and provide all necessary data that USFWS would need as input to the USFWS REA spreadsheet to calculate the required number of power pole retrofits for the

project (see Appendix G of the USFWS Eagle Conservation Plan Guidance (USFWS 2013)). However, if the EITP applicant chooses to use the In Lieu Fee program provided by Eagle Electrocutation Solutions, LLC (or another USFWS endorsed in lieu fee mitigation bank) for the required compensatory mitigation to offset the take of golden eagles, then a fully detailed power pole retrofit plan is not required. In these cases, the project proponent need only provide USFWS with a memo documenting the intent to use an in lieu fee mitigation provider, the name of the mitigation banker, and key information USFWS would need to complete an REA analysis for the project. Relative to bald eagles, applicants should work with USFWS to determine whether or not compensatory mitigation will be required for their wind project – this is rarely necessary.

11. Adaptive Management:

Adaptive management is a component of every EITP issued by USFWS, Region 6 to companies for wind energy facilities. If a wind company negotiated with USFWS, Region 6 and reached agreement on an adaptive management table for the wind project, with various eagle take thresholds and the corresponding actions or conservation measures that will be implemented once that threshold is reached, then include this in the ECP submission. At a minimum the applicant and USFWS need to discuss what actions will be taken if eagle take approaches or reaches the amount authorized by an EITP issued by USFWS, Region 6 to the company. The ECP submission should include the outcomes from these discussions.

12. Other USFWS Permits:

If an applicant intends to apply for any other permits to USFWS, Region 6, MBMO, for other authorizations needed for their wind project, either under the Migratory Bird Treaty Act (MBTA) or BGEPA, include a statement indicating which permits are needed and clearly indicating that they will apply for them. For example, many wind energy companies apply for MBTA 21.27 Special Purpose Utility permits so that they can legally collect migratory birds and hold them at their facility for use in post-construction mortality monitoring work. In some cases construction of a wind project may occur in close proximity to an in-use eagle nest such that a BGEPA 22.26 permit is necessary, so that there is legal coverage under a permit, if this construction work were to cause disturbance take of eagles at the nest.

**B. The following are things that should not be included in the ECP submission to USFWS, Region 6, MBMO to support an application for an EITP for a wind energy facility:**

1. Do not submit the longer, more extensive type of ECPs previously submitted to USFWS, Region 6, MBMO to support applications for EITPs for wind energy facilities. With the process outlined above in Part A of this guidance memo, we are trying to substantially reduce the time required for ECP development and submission to USFWS, as well as the volume of material. Following our new recommended process reduces the ECP development work to providing responses to the specific questions above, plus submission of all of the project-specific eagle survey information (e.g. survey methods, maps of survey areas, survey results on maps or in data tables, etc. as described under Eagle Data for the Project section in Part A above). There is no



need for back and forth review and editing efforts on individual chapters or lengthy ECP documents. Instead, if a company submits all of the requested information per the Part A of this guidance memo above, then they are done with the process. There may still be instances with the new ECP process where something that was requested was not provided. In these cases, we will only ask for the missing data, or map, or other information, etc. If a company does submit longer ECP documents vs. following the streamlined approach outlined in this memo, their EITP application processing may be delayed due to the larger volume of materials to review. Applicants for EITPs for wind energy projects that follow the new recommended approach provided by USFWS, Region 6, will find that the ECP process is shorter, more efficient, and less costly.

2. Do not provide overall risk categorization for the wind energy project per USFWS, Eagle Conservation Plan Guidance (USFWS, 2013).
3. Do not include descriptions of federal laws such as BGEPA, MBTA, ESA, and NEPA, or state laws applicable to the project.
4. An applicant may well choose to take the eagle use data collected for their wind energy project and run the USFWS Collision Risk Model (CRM) to determine predictions of eagle take associated with their wind project. We understand that many companies will want to conduct such analyses. However, do not submit any of these model runs, or related interpretations, or explanations of these CRM runs to USFWS, Region 6, MBMO. The USFWS, 2016 Revised Eagle Rule (FRN Vol 81, 91494) is clear that the USFWS will be the party using the eagle survey data provided by the applicant to run the CRM to determine a predicted level of eagle take for a project, and the related take authorization level in an EITP, if a permit is issued for the project. USFWS, will complete the CRM runs to determine a predicted level of eagle take as part of the NEPA process, and the outcomes of this analysis will be shared with the applicant.
5. Do not include any Local Area Population (LAP) analysis for the wind project. USFWS, Region 6, is responsible for completing this analysis using USFWS eagle density information for Eagle Management Units, information on other eagle take that USFWS has previously authorized within the LAP associated with the wind project, and information USFWS has on unpermitted eagle take in this same LAP. It is not the responsibility of any EITP applicant to complete this analysis. USFWS will complete the LAP analysis as part of our NEPA compliance work on an EITP application and share outcomes of that analysis with the applicant.
6. Wind energy companies developing projects that will have associated golden eagle take will need to provide compensatory mitigation to offset this take as discussed in the Compensatory Mitigation section under Part A, above. In such cases the EITP applicant may choose to use a copy of the REA provided by USFWS to conduct their own REA analysis, which is fine. However, results from applicant conducted REA analysis should not be included with the ECP submission, nor should written interpretations of these same results. USFWS will complete an REA analysis using input from the EITP applicant as part of the NEPA process and share the results with them.

7. Some wind energy companies applying to USFWS, Region 6 for EITPs will be seeking take authorization for wind projects that are already operating. And the company may already be conducting post-construction mortality monitoring specific to eagles. In these cases, EITP applicants may want to use the post-construction mortality monitoring data they have collected to run analyses with the Evidence of Absence tool, or other tools, and this is fine. However, do not submit results of these types of analyses, or interpretations of these results with the ECP submission to USFWS. USFWS will conduct an analysis using post-construction mortality monitoring data provided by the EITP applicant as part of the NEPA process and share results with them.

**Literature Cited:**

16 U.S.C. §§ 668–668d Bald and Golden Eagle Protection Act

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U.S. Fish and Wildlife Service. 2012. U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines, March 23, 2012.

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U.S. Fish and Wildlife Region, Region 6, Mountain-Prairie Region. 2013 Final Outline and Components of an Eagle Conservation Plan (ECP) for Wind Development: Recommendations from USFWS, Region 6.

## **APPENDIX A: The Role of U.S. Fish and Wildlife Service, Region 6, Ecological Service Field Offices in Implementing:**

U.S. Fish and Wildlife Service, Region 6, Recommended Approach for Development and Submission of Eagle Conservation Plans submitted to Region 6, Migratory Management Office in support of an Eagle Incidental Take Permit Application for Wind Energy Projects.

U.S. Fish and Wildlife Service, Region 6, Migratory Bird Management Office

**March 31, 2021**

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**Introduction:** The primary audience for the U.S. Fish and Wildlife Service (USFWS), Region 6 guidance listed above is wind energy companies who intend to apply for eagle incidental take permits (EITPs), pursuant to the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668–668d Bald and Golden Eagle Protection Act), and the environmental consultants who assist them with this process. The USFWS, Region 6 guidance memo focuses on the final stages of the process of applying to the USFWS, Region 6, Migratory Bird Management Office (MBMO) for an EITP for a wind energy facility. It focuses on the key things we need for our review of the EITP application. For wind energy projects not yet constructed it addresses what comes after the project has been sited, the project design is completed, eagle data have been collected for the project, and avoidance and minimization measures have been discussed with the USFWS and applied to the project. For existing online wind energy facilities, it addresses what comes after eagle data are collected for the project and avoidance and minimization measures have been discussed with the USFWS and applied to the project

The purpose of APPENDIX A is to outline and reinforce the role that USFWS, Region 6, Ecological Services Field Offices (ESFOs) have with regard to wind energy projects whose developers/owners apply for EITPs. USFWS, Region 6, ESFOs will continue to be engaged with wind energy companies seeking EITPs from the USFWS, Region 6, MBMO. This role will mostly encompass the early and middle stages of the USFWS process of working with companies seeking EITP's. Wind energy companies seeking EITPs should contact and work with the USFWS, ESFO in the USFWS, Region 6 state where their wind energy facility is being developed or has been built and is operational. The USFWS, ESFO should be contacted early in the project development, and/or EITP process.

1. USFWS, Region 6, ESFOs as agency leads for wind energy projects:

Any company planning to develop a wind energy project in Region 6, or energy companies with online wind facilities in Region 6, that intend to apply to USFWS, Region 6, MBMO for an EITP for their project, should begin the process by contacting the appropriate state USFWS, ESFO where their project will be developed or is currently operating. The ESFOs will continue to be the initial point of contact for USFWS regarding EITPs.

2. Applying U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines (WEG) to a wind energy project:

The USFWS, Region 6, ESFOs will continue to be the lead for USFWS in applying the U.S. Fish and Wildlife Service WEG (USFWS, 2012) to wind energy projects. This will include making wildlife survey recommendations for the wind project.

3. Wind Energy project description, components, and project siting:

The USFWS, Region 6, ESFOs will be the leads with regard to the wind project description, components, and siting discussions. Wind energy companies should contact the USFWS, ESFO and provide a description of all project components including the number and size of the wind turbines, power lines, roads, etc. USFWS, Region 6 encourages wind energy companies to contact the local ESFO early in the project development stage. Where possible, this includes coming to USFWS, ESFOs before a final wind project site has been selected so that we can work with the proponent to evaluate and consider multiple possible development sites. The USFWS, Region 6, MBMO also will engage with our ESFOs to review and provide input on project siting discussions for a project to the extent we are available.

4. Eagle Surveys for the Wind Energy Project:

The USFWS Region 6 ESFOs will provide proponents with the USFWS Region 6 standardized wind energy project eagle nest survey protocols as early as possible in the process. Energy companies proposing to conduct any eagle surveys (eagle use surveys, nest surveys, roost surveys, migration surveys, post-construction mortality monitoring surveys, etc.) for their wind energy projects should submit draft survey protocols to the USFWS, Region 6, ESFO prior to implementation to allow input on survey design and timing. The USFWS, Region 6, MBMO also will engage with our ESFOs to review and provide input on eagle surveys for a wind energy project. In particular, the USFWS, Region 6, MBMO will provide the revised recommended protocol for states in Region 6 where the general USFWS, Region 6-recommended protocol for eagle nest surveys for wind projects needs to be adjusted due to differences in eagle nesting phenology for a particular wind energy project .

5. Endangered Species Act Compliance:

The USFWS, Region 6, ESFO in the state your wind energy project is being developed or is operational, will be the lead for USFWS in achieving project compliance with the Endangered Species Act (ESA). The ESFOs will review your wind project and provide guidance regarding federally listed species, proposed species, and critical habitat (designated or proposed), and the potential for take relative to the project. If the ESFO makes a determination that your project will result in take of listed or proposed wildlife, fish, or plants, or adversely modify critical habitat for listed species (designated or proposed), then they will work with you to achieve required compliance with section 7 or section 10 of the ESA. This is an important and necessary step for all wind energy projects. It is essential that wind energy project operators or developers complete this analysis and resolve any project ESA-related issues with the ESFO as early in the

project coordination process as possible. Ideally this ESA compliance work (for projects where it is necessary) should be completed in advance of seeking an EITP. If it is not then this presents a challenge for USFWS, Region 6, MBMO since wind project design or operational modifications may result from the ESA consultation process with USFWS ESFO's that also could affect eagles. Failure to complete ESA consultation for a wind energy project (when required) could result in delays in the EITP process with USFWS, Region 6, MBMO. After required consultation on ESA-related issues is completed for the project the USFWS ESFO that completed the ESA consultation work should provide the MBMO with a copy of the final documents.

6. Review of Eagle Data for the Wind Project:

All wind energy companies seeking EITPs for wind energy facilities in Region 6 should submit copies of all eagle data collected for the project to the relevant state ESFO. ESFOs will need these eagle data for the project to assess the overall risk of the wind facility and to serve as the basis for avoidance and minimization discussions. The USFWS, Region 6, MBMO also will engage with our ESFOs to review eagle data resulting from eagle surveys conducted for the wind energy project. Data from eagle surveys should be submitted jointly, to both the Region 6, ESFO and the MBMO, as soon as possible after they are completed in order to have maximum benefit for the USFWS in achieving eagle conservation objectives for the project. In some cases, eagle survey data may be transmitted to USFWS after the first year of such surveys is completed. In all cases project data for eagles needs to be transmitted to both the USFWS, Region ESFOs and MBMO.

7. Avoidance and Minimization Measures Implemented for the Project:

As previously indicated in the guidance above, avoidance and minimization discussions between the EITP applicant and USFWS, Region 6 will need to be completed as part of the EITP process. This applies both to wind energy projects under development as well as those already operational. These discussions are a very important step in the permit process. This step should be completed well in advance of the submission of an EITP application by a wind company to USFWS, Region 6, MBMO. Typically, these discussions should occur after the eagle data collection for the project is completed, although in some cases they could occur before the eagle survey work is completed. Information provided by eagle surveys for the project is highly important in informing the number and types of avoidance and minimization measures that USFWS, Region 6 will recommend for the wind project. This step will involve both the USFWS, Region 6, ESFOs and MBMO.

8. Review of Compensatory Mitigation Plans:

All compensatory mitigation plans will be reviewed and evaluated by the USFWS, Region 6, MBMO for applicants seeking EITPs for wind energy projects that will result in take of golden eagles. Region 6, ESFOs also may review and provide input on these compensatory mitigation plans to assist the MBMO.

**Literature Cited:**

16 U.S.C. §§ 668–668d Bald and Golden Eagle Protection Act

Code of Federal Regulations, Title 50: Fisheries and Wildlife, Part 22- Eagle Permits, March 13, 2019 version.

Federal Register. Vol 81, 91494, December 16, 2016.

U.S. Fish and Wildlife Service. 2012. U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines, March 23, 2012.

U.S. Fish and Wildlife Service. 2013. Eagle Conservation Plan Guidance, Module 1-Land-based Wind Energy, Version 2, April, 2013.