United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer to:
FWS/IR9/12/MBHP

FINDING OF NO SIGNIFICANT IMPACT
Decision to Issue an Eagle Take Permit to Telocaset
for the Elkhorn Valley Wind Farm
U.S. Fish and Wildlife Service
Portland, OR
[January 2022]

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C 4321 et seq.), the United States Fish and Wildlife Service (hereafter, Service) prepared a Final Environmental Assessment (FEA; USFWS 2022), tiered to the Service's Programmatic Environmental Impact Statement (PEIS; USFWS 2016) for the Eagle Rule Revision issued in December 2016. This FEA was written because the Service needs to make a decision on an eagle incidental take permit application (pursuant to 50 CFR 22.26), submitted by Telocaset Wind Power Partners, LLC (Telocaset), for the take (i.e., incidental killing) of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) at the Elkhorn Valley Wind Farm (Project) in Union County, Oregon. The decision by the Service to issue a permit is a federal action.

Should the Service decide to issue a permit under one of the Action Alternatives, we need to ensure that our decision to issue the permit meets the Service's preservation standard for eagles; is otherwise consistent with the Bald and Golden Eagle Protection Act ("Eagle Act") (16 U.S.C. §§ 668-668d) and its implementing regulations (50 CFR § 22.26); is consistent with general permit issuance criteria (50 CFR Part 13); is consistent with our legal authorities, and ensures that permit conditions further long-term conservation of bald and golden eagles.

The FEA considered three alternatives:

Alternative 1, deny the permit (the No Action Alternative);
Alternative 2, issue a 5-year eagle take permit based on their permit application and with negotiated conditions (our Preferred Alternative);
Alternative 3, issue a 30-year eagle take permit to the applicant.

Other alternatives were considered but rejected as not meeting our purpose and need as described in Section 3.3.4 of the FEA.

BACKGROUND

Telocaset submitted a complete application for an Eagle Take Permit on June 16, 2014, requesting authorization under the Eagle Act of non-purposeful or "incidental" take of bald eagles and golden eagles from Project operation. At the time of the initial application, 5 years was the maximum tenure of permits that could be issued. On March 23, 2017, after the most recent revision of the permitting regulation (50

CFR § 22.26) allowing for permits to be issued for up to 30 years, Telocaset updated their request and stated that they wished to be issued a permit with a 30-year tenure, under the most recent regulation. On October 5, 2020 Telocaset requested to amend their application again to reduce the requested permit tenure to a 5-year duration.

The Project site was targeted for development in 1999 as part of a wind monitoring program by Oregon State University's Energy Resource Research Lab, which sought to identify areas suitable for potential wind development, including the area near Pyles Canyon. In 2002, Zilkha Renewable Energy, a predecessor to Telocaset, installed the first meteorological evaluation tower (MET) at the Project and initiated the wildlife baseline study design. The Project was issued a Conditional Use Permit by Union County in 2005. Telocaset constructed the Project and it became operational in 2007. The Project comprises 61 wind turbines with a generating capacity of 101 megawatts (MW) and is described in greater detail in the Eagle Conservation Plan (Appendix A in the FEA), which is the foundation of the permit application.

DESCRIPTION OF PROJECT PRACTICES PROPOSED UNDER THE PREFERRED ALTERNATIVE

Fatality Monitoring

Telocaset will be required to implement a fatality monitoring program, including formalized searches for eagle remains, searcher-efficiency trials, and carcass persistence trials. Monitoring would be required to begin within 90 days of permit issuance. Eagle remains searches would be required for 24 consecutive months using human observers and would occur at least once per month at each of the 61 Project turbines. Bias trials, including searcher efficiency and carcass persistence trials, would be required for one complete year during the first 27 months of the permit tenure.

Searcher efficiency trials would also need to be conducted for one complete year for any other search method used after completion of the first two years of required fatality monitoring. This would include years when no formal fatality searching is planned (i.e., test the searching efficiency of project staff during day-to-day Project operations and activities). The placement of trial carcasses would be required to be stratified by each of the four seasons. Stratification may also be performed by visibility class, if appropriate. At least 20 surrogate carcasses would be used per season and placed at randomly selected turbines and locations within each search plot and strata. Searchers must not know they are being tested.

Carcass persistence trials would be required for at least one complete year during the first 27 months of the permit tenure. At least 10 surrogate carcasses would be used per season and placed at random locations within the Project footprint or similar nearby habitat. The placement of trial carcasses would be stratified by each of the four seasons. Raptor remains would be used as surrogates when possible. Trials would have a duration of at least 90 days per season.

Adaptive Management

Telocaset will be required to implement the adaptive management plan described in Section 3.3.2.3 of the EA. This plan, coupled with post-construction fatality monitoring, will help ensure that authorized take is not exceeded during the permit term. If observed take at the Project reaches predetermined levels (i.e. triggers) that would cause the Service to be concerned, an additional conservation measure will be implemented at the Project with the goal of reducing take rates.

Reporting

Take Reports

Telocaset must report all eagle fatalities to the Migratory Bird Permit Office (MBPO) via email, within 48 hours of discovery, whether observed during post-construction fatality monitoring or incidentally by Project personnel. Reports of eagle fatalities must be documented using a standardized form and include the date of discovery, the species and estimated age of the eagle, the location, the suspected cause and date/time of death or injury, and any other pertinent details specified on the permit (e.g., turbine location, wind conditions, etc.).

Annual Reports

Telocaset must submit written reports each year during the 5-year permit term. Reports will be submitted to us by January 31 of each year. A summary of some of the key components of each annual report is provided below.

- Observed incidents of eagle take and how each was discovered.
- Disposition of eagle remains (alive/dead), location, species, sex, age, and dates of each observed fatality.
- Maps or graphical representations illustrating the geographic distribution and location of all observed fatalities (relative to turbine locations).
- Search methods used, and results from eagle remains searches
- Bias trial methods used, and results from those bias trials

EFFECTS AND FINDINGS

The three alternatives considered in the EA provide a reasonable range to assess differing potential environmental effects associated with issuance of an Eagle Permit. Alternative 1 does not further the long-term conservation of bald or golden eagles. It does not achieve any requirement for eagle conservation measures or offer any opportunities to learn about eagle risk at the Project. Alternatives 2 and 3 have similar but slightly differing environmental effects. Both require fatality monitoring and adaptive management that meet our population management objective. However, Alternative 2 is our Preferred Alternative because it meets our regulatory requirements and is economically feasible for the applicant. Alternative 3 is likely to provide increased benefits to eagles by extending the length of the permit and associated requirements for fatality monitoring and adaptive management. While increasing the tenure of the permit to 30 years may be consistent with the goals of maintaining or improving eagle populations, the applicant only requested a 5-year permit tenure and having this facility under a 5-year permit, rather than no permit, is preferable.

Rigorous analyses of eagle population data and models in the PEIS allowed the Service to determine allowable take thresholds for both eagle species. We have determined that implementing the Preferred Alternative will not result in the exceedance of those take thresholds for either eagle species. Additionally, we have determined that direct, indirect, or cumulative permitted take will not exceed the 5-percent thresholds of the LAP, described in the FEA and PEIS for golden eagles. Further, we do not have evidence to suggest that unauthorized take is presently exceeding 10 percent of the LAP for golden eagles. Similarly, for bald eagles, the Preferred Alternative will not result in direct or cumulative permitted take that exceeds the 5-percent thresholds of the LAP. In addition, we do not have evidence to suggest that unauthorized take is presently exceeding 10 percent of the LAP for bald eagles. Authorizing take at this facility is, therefore, compatible with the preservation of bald eagles and golden eagles.

Direct and indirect effects to other species of birds and bats are similar under all alternatives because the project is operational now and will continue so regardless of this permit decision. However, the intensity

of mortality and injury impacts will likely be reduced under Alternatives 2 and 3 due to the required implementation of avoidance/minimization measures, and monitoring for eagles. Adverse impacts to migratory birds and bats could be further reduced under both action Alternatives if conservation measures were implemented under the required adaptive management framework. For example, if adaptive management triggered the application of a monitoring and curtailment program for eagles, this action could also potentially reduce the potential for migratory bird and bat fatalities and injuries associated with collisions with turbine blades.

The Service must also find that, upon receipt of a complete application, the criteria in 50 CFR 13.21 "Issuance of Permits" are met and the determinations required under 50 CFR 22.26(f) are made. Based on the EA, the Service finds that the issuance of this permit under the Preferred Alternative meets all of the criteria required under 50 CFR 13.21 and the Service has also made the required determinations of 50 CFR 22.26 (see permit determination form, in project file).

FINDINGS RELATED TO OTHER RESOURCES

No known historic properties have been identified in the area where the activity will be taking place. The proposed action will not significantly impact structures or properties, and does not conflict with proposed or adopted local, regional, State, interstate, or Federal land use plans or policies. The proposed action will not authorize the take of species listed or proposed under the Endangered Species Act. No designated Critical Habitat will be affected by the proposed action as it does not authorize a change in the habitat conditions for which such areas would be designated.

The proposed action is unlikely to result in significant cumulative effects, as they are defined in our eagle regulations, given current knowledge. If the Service proposes future actions that might result in significant cumulative effects, they will be considered and taken into account for future eagle take permit analyses and/or during future amendment actions proposed for this permit, or new applications for another 5-year permit at the expiration of the one proposed here. Precedent already exists for permits of this nature, so this action does not represent a new precedent or decision in principle. The proposed action will not have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.

PUBLIC SCOPING AND TRIBAL CONSULTATION

Nine federally recognized Indian Tribes (as described in the FEA), because of their proximity to the Project, might have interests that could be affected by this permit decision. We sent letters to seven of these tribes on January 28, 2016 (excluding the Confederated Tribes of the Colville Reservation and Spokane Tribe based on the distance of the Project), to inform them about the eagle take permit application, and to provide the opportunity to review the application and consult on the potential issuance of an eagle take permit. We received no responses from these letters, and no tribes requested formal government-to-government consultation. To ensure that all interested tribes were notified, we expanded our original outreach efforts from 140 miles (outdated estimate of golden eagle natal dispersal distance) to 218 miles from the Project (2x the most recent estimate of golden eagle natal dispersal distance). We sent an email on 29 June 2021 updating all 9 tribes on the status of the application review. No responses were received. We invited all tribes in the region to an annual regional eagle summit on July 15, 2021 to provide updated information on the eagle take permit program and discuss current eagle issues. We received no project-specific comments or requests for additional information from Tribes.

The Draft EA (USFWS 2021) was made available to the public on 20 September, 2021 for a 30-day comment period, allowing the public opportunity to provide comments on the content and scope of the

document. A letter was sent to tribes and other potentially interested parties on 25 September 2021 to inform them of the public comment period for the Draft EA. We received one written comment during this 30-day comment period. The lone comment was from the Oregon Department of Fish and Wildlife.

DETERMINATION

The Service has selected the Preferred Alternative (Alternative 2) as described in the FEA and will issue a 5-year Eagle Incidental Take permit (50 CFR 22.26) for the incidental take of bald eagles and golden eagles associated with the operation of the Elkhorn Valley Wind Farm. We have found the application submitted for the permit under 50 CFR 22.26, and the conditions negotiated with the applicant, meet the issuance criteria.

We considered impacts to eagles and other resources from the issuance of this permit at the eagle management unit and local area scales in this FEA, incorporating the PEIS by reference. The eagle take that we predict will occur at this facility is conservative and within allowable thresholds. Under this alternative, Telocaset will be required to implement previously voluntary avoidance and minimization measures. Additionally, they will be required to perform fatality monitoring and implement adaptive management that reduces eagle mortalities further if take rates appear to be higher than expected. Because of this, and considering the population analysis in the PEIS for both species, we conclude that any effects of the action under the Preferred Alternative are not significant.

The Service has determined that issuance of a permit under 50 CFR 22.26 for the take of 16 golden eagles and 2 bald eagles over the 5-year duration of the permit does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an EIS is not required.

PUBLIC NOTICE

An electronic copy of this FONSI has been posted on the Service's website: https://www.fws.gov/pacific/migratorybirds/library/wpanalyses.html.

REFERENCES

USFWS 2016. Programmatic Environmental Impact Statement for the Eagle Rule Revision. United States Department of the Interior, Fish and Wildlife Service. 272pp. https://www.fws.gov/migratorybirds/pdf/management/FINAL-PEIS-Permits-to-Incidentally-Take-Eagles.pdf

USFWS 2021. Draft Environmental Assessment Elkhorn Valley Wind Facility Eagle Incidental Take Permit. U.S. Fish and Wildlife Service, Migratory Birds and Habitat Program, Portland, Oregon. https://www.fws.gov/pacific/migratorybirds/library/

USFWS 2022. Final Environmental Assessment Elkhorn Valley Wind Facility Eagle Incidental Take Permit. U.S. Fish and Wildlife Service, Migratory Birds and Habitat Program, Portland, Oregon. https://www.fws.gov/pacific/migratorybirds/library/

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Chief (Acting)
Migratory Birds and Habitat Program