



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
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In Reply Refer to:  
FWS/IR9/12/MBHP

**FINDING OF NO SIGNIFICANT IMPACT**  
**Decision to Issue an Eagle Take Permit to PacifiCorp**  
**for the Marengo I and II Wind Project**  
**U.S. Fish and Wildlife Service**  
**Portland, OR**  
**June 2021**

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 an Environmental Assessment (EA), tiered to the Service's Programmatic Environmental Impact Statement (PEIS; USFWS 2016) for the Eagle Rule Revision issued in December 2016. This EA 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 PacifiCorp, for the take (i.e. incidental killing) of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) at the Marengo I and II Wind Facilities (Project) in Columbia County, Washington. 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 EA considered three alternatives:

Alternative 1, deny the permit (the No Action Alternative);  
Alternative 2, issue a 30-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 with conservation measures additional to those listed in Alternative 2.

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

## **BACKGROUND**

PacifiCorp submitted a complete application for a 30-year Eagle Take Permit in May 26, 2020, requesting authorization under the Eagle Act of non-purposeful, incidental take of bald eagles and golden eagles from Project operation. Marengo I was initially three phases of a four-phase project proposed by Blue Sky Wind, LLC. The three phases (central, eastern, and southern phases) were sold to PacifiCorp in September 2006. The northern phase became the Hopkins Ridge Wind Power project, which is not a part

of the Marengo I & II Wind Project, and is not owned by PacifiCorp. Construction of Marengo I started in 2006, and this wind facility became operational in August 2007. Marengo II is located south of Hopkins Ridge and west of Marengo I (Figure 2), and was originally named the Dayton Wind Project when it was owned by Blue Sky Wind, LLC. Construction of Marengo II started in 2007 and it became operational in June 2008.

The Project consists of 117 turbines and is described in greater detail in the Eagle Conservation Plan (Appendix A in the EA), which is the foundation of the permit application. PacifiCorp repowered the turbine nacelles and rotors on all 117 turbines in February 2020, increasing the amount of hazardous area in the Project and subsequently increasing the risk to eagles and other avian species of colliding with turbine blades.

## **DESCRIPTION OF PROJECT PRACTICES PROPOSED UNDER THE PREFERRED ALTERNATIVE**

### **Compensatory Mitigation Measures**

Consistent with our regulations implementing the Eagle Act, PacifiCorp will be required to provide compensatory mitigation to offset predicted take of golden eagles at a ratio of 1.2:1. This offset will be achieved by retrofitting high-risk electrical distribution poles. The number of poles that will be retrofitted is derived using our Resource Equivalency Analysis (REA; Appendix C in the EA), which is based on the predicted number of annual eagle fatalities (Appendix B in the EA) and published values for how many eagles are killed at high-risk power poles. When running the REAs used to determine the range of required compensatory mitigation for this Project, we assumed that power pole retrofits would be effective at preventing eagle deaths for either 10 or 30 years, depending on the projected longevity of the retrofit action undertaken. We further assumed that any retrofit would be completed before Jan 31, 2023. Retrofit commitments set out below are applicable if PacifiCorp decides to mitigate in 5-year increments, as expected; however, it remains possible that PacifiCorp will elect to provide mitigation for the entire 30-year permit term upfront.

PacifiCorp's compensatory mitigation commitment under the Preferred Alternative is summarized in Table 1.

Table 1. Compensatory Mitigation Commitment for Preferred Alternative

|  | Golden Eagle  | Bald Eagle |
|--|---------------|------------|
| Predicted take for 30-year permit term (Annual)  | 8.01          | 8.01       |
| Take that needs to be offset <sup>1</sup> (Annual rate)  | 2.89          | N/A        |
| Number of poles to be retrofitted to mitigate for the first 5 years of predicted take (based on longevity of pole retrofit effectiveness of 30 years / 10 years)   | 233 / 535     | N/A        |
| Number of poles to be retrofitted to mitigate for all 30 years of predicted take if fatality predictions remain constant throughout the permit term (based on longevity of pole retrofit effectiveness of 30 years / 10 years) | 1,398 / 3,210 | N/A        |

<sup>1</sup>Compensatory Mitigation is only required for Golden Eagle take estimated at the 117 turbines built or repowered after the publication of the 2009 rule at the Marengo I and II Wind Project.

To meet their compensatory mitigation requirement, PacifiCorp may: 1) use a Service-approved in-lieu fee program, 2) apply Service-approved mitigation credits from previous power pole retrofits, and/or 3) select and retrofit power poles determined to be high-risk to eagles.

As described in the EA, high risk poles will be identified by selecting circuits for retrofitting based on the presence of golden eagles and golden eagle habitat and by selecting individual poles based on a risk index as described in Dwyer *et al.* (2014), which considers the equipment on, and configuration of the poles in question. To count as compensatory mitigation, the power poles to be retrofitted must be in addition to whatever the power company already had plans to complete; that is, poles retrofitted under this compensatory mitigation plan must be an entirely new set of poles, not already scheduled for retrofitting or replacement by the power company in the foreseeable future. Additionally, the permittee has agreed to prepare and submit a cultural resource survey report for the power poles they select for retrofitting that require pole replacement. The Service will evaluate this information and consult with the interested Tribes, the State Historic Preservation Officer, and others, as appropriate, at that time.

Within 60 days of completion of retrofits, PacifiCorp will provide an accounting of the retrofitted poles, including photos to ensure retrofits were completed correctly. Compensatory mitigation outlined in Table 1 will be implemented by January 31, 2023 to offset take over the first five years of the permit tenure, as described above. The Service will have periodic administrative permit reviews at intervals not greater than every 5 years. Each review will include, among other things, a re-evaluation of authorized eagle take at the Project site, a calculation of a new required compensatory mitigation amount (considering any excess or shortage of compensatory mitigation provided during previous administrative periods), the effectiveness of adaptive management measures implemented, the status and trends of eagle populations, and the continued accuracy of the potential effects analyzed in the EA and PEIS.

PacifiCorp may request approval by the Service to offset predicted take through another compensatory mitigation method. The permittee may request such an amendment by submitting a full written justification and supporting information (see Section 3.3.2.3 of the EA).

### **Fatality Monitoring**

PacifiCorp will be required to conduct a fatality monitoring program that achieves a minimum site-wide probability of detection of 0.35 (35%) over every 5-year review period throughout the permit tenure, as described in the EA. This monitoring program will include formalized eagle remains searches, as well as bias trials to estimate searcher efficiency and carcass persistence.

In all of the 30 permit years, PacifiCorp will be required to perform some level of eagle remains searches, but will not be required to conduct formal searches in all years. During years when formal fatality monitoring is not conducted, PacifiCorp will use trained Project staff in identifying and reporting discoveries of eagle remains during routine maintenance activities. Thus, in all 30 permit years, PacifiCorp will be performing some level of eagle remains searches and monitoring. Searcher efficiency trials will be conducted for one full year during each 5-year review period for each unique carcass search method employed, stratified by each of four seasons, and carcass persistence trials will be conducted for one full year during each 5-year review period, stratified by each of four seasons. More rigorous fatality monitoring (Enhanced Fatality Monitoring) may be warranted, if triggered by Adaptive Management procedures described in Section 3.3.2.5 of the EA.

Additionally, at least one year of searches for eagle remains and all bias trials will be conducted in each 5-year administrative permit period by a qualified, independent third-party. This third-party will be required

to provide all data from monitoring efforts, including an annual summary report, directly to the Migratory Bird Permit Office prior to, or at the same time as, providing it to the permittee.

### **Adaptive Management**

PacifiCorp will be required to implement the adaptive management plan described in Section 3.3.2.5 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 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*

PacifiCorp must report all eagle fatalities to the Migratory Bird Permit Office 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 (e.g., turbine location, wind conditions, etc.).

#### *Annual Reports*

PacifiCorp must submit written reports each year during the 30-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).

### **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 achieve a net conservation benefit to eagles whereas the other alternatives do. Alternatives 2 and 3 have similar but slightly differing environmental effects. Both require fatality monitoring, adaptive management, and compensatory mitigation that meet our population management objective. However, Alternative 2 is our Preferred Alternative because it meets our regulatory requirements, including minimum compensatory mitigation requirements, and it is economically feasible for the applicant. While Alternative 3 provides increased benefits to eagles by requiring turbine curtailment to reduce estimated fatalities by 10% and offsetting take at an elevated ratio of 2:1, and increased compensatory mitigation beyond meeting the preservation standard may be consistent with the goals of maintaining or improving eagle populations, it may not be practicable for the applicant, and is not required under the Eagle Act (USFWS 2016b). As evaluated in the PEIS, the 1.2:1 mitigation ratio is thought to appropriately balance what is reasonable and practicable for permittees with the biological needs of the species, consistent with the Eagle Act.

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 1- and 5-percent thresholds of LAP described in the EA 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. 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 implementation of avoidance/minimization measures, monitoring, and compensatory mitigation 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. Specifically, 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. Additionally, compensatory mitigation required under both action Alternatives to offset eagle take could benefit raptors and other birds with large wingspans by reducing the risk of electrocution elsewhere.

The Service must also find that, upon receipt of a complete application, the criteria in 50 CFR § 13.21 "Issuance of Permits" are met, the issuance criteria are met under 50 CFR § 22.26, and required determination are made in 50 CFR § 22.26 (prior to 2016 revision). Based on the EA, the Service finds that the issuance of this permit under the Preferred Alternative meets all of the criteria required and required determinations of 50 CFR § 22.26 and 50 CFR §13.21.

## **FINDINGS RELATED TO OTHER RESOURCES**

No known historic properties have been identified in the area where the activity will be taking place, nor are the offsite pole retrofits required for mitigation expected to have the potential to affect cultural resources. Nonetheless, the permittee has agreed to prepare a cultural resources assessment for any future poles selected that require pole replacement, and the Service will consult with interested tribes, the relevant State Historic Preservation Officer, and others, as appropriate. 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 future actions arise that might result in significant cumulative effects, they will be considered and taken into account for future eagle take permit analyses and during each 5-year review of the permit. 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**

Twelve federally recognized Indian Tribes (as described in the EA) could have special interests that may be affected in the area surrounding the Project based on their proximity to the Project and previous communication. Letters were sent to these Tribes on 10 December, 2019 to inform them about the Eagle Permit application and to provide them the opportunity to review the application and consult on the potential issuance of an Eagle Permit. We received one response from these letters, from the Confederated Tribes of the Colville Reservation, and no tribes requested formal government-to-government consultation. We also sent an email updating the Tribes on the status of the permit review on 2 Dec 2020.

The Draft EA (USFWS 2020) was made available to the public on 11 Mar 2021 for a 30-day comment period, allowing the public opportunity to provide comments on the content and scope of the document. An email was sent to Tribes and other potentially interested parties on 11 Mar 2021 to inform them of the availability of this EA. We received three written comments during this 30-day comment period. One from the Washington Department of Fish and Wildlife, one from the Confederated Tribes of the Colville Reservation, and one from Yakama Nation.

## **DETERMINATION**

The Service has selected the Preferred Alternative (Alternative 2) as described in the EA and will issue a 30-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 Marengo I and II Project. 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 EA, incorporating the PEIS by reference. The eagle take that we predict will occur at this facility is conservative, within allowable thresholds, and for golden eagles, will be offset by PacifiCorp through mitigation approved by the Service. Additionally, under this alternative, PacifiCorp 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, and to continue operational measures that avoid and minimize eagle mortality. 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 241 golden eagles and 241 bald eagles over the 30-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

Dwyer, J.F., R.E. Harness, K. Donohue. 2014. Predictive Model of Avian Electrocution Risk on Overhead Power Lines. *Conservation Biology* 28(1): 159-168.

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. Final Marengo I and II Eagle Permit Environmental Assessment. U.S. Fish and Wildlife Service, Migratory Birds and Habitat Program, Portland, Oregon. <https://www.fws.gov/pacific/migratorybirds/library/wpanalyses.html>

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Chief

Migratory Birds and Habitat Program, Interior Regions 9 and 12