



# **Appendix A**

## **Notice of Intent**

**Billing Code 4310-55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R2-ES-2010-N283]**

**[20124-1112-0000-F2]**

**Draft Environmental Impact Statement and Habitat Conservation Plan for  
Commercial Wind Energy Developments within Nine States.**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; announcement of public scoping meetings; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service, as lead agency advise the public that we intend to prepare an environmental impact statement (EIS) on a proposed application, including a Habitat Conservation Plan (HCP), for an Incidental Take Permit (ITP) under the Endangered Species Act of 1973, as amended. The potential ITP would include federally listed and candidate species within portions of nine states (North Dakota, South Dakota, Montana, Colorado, Nebraska, Kansas, New Mexico, Oklahoma, and Texas).

The activities covered by a potential ITP would include regional-level construction, operation, and maintenance associated with multiple commercial wind energy facilities. The planning partners are currently considering, for inclusion in the HCP, certain species listed as federally threatened or endangered, or having the potential to become listed during the life of the HCP, and having some likelihood of being taken by the applicant's activities within the proposed permit area. The intended effect of this notice is to gather information from the public to develop and analyze the effects of the potential issuance of an ITP that would facilitate wind energy development within the planning area, while minimizing incidental take and mitigating the effects of any incidental take to the maximum extent practicable.

We provide this notice to (1) describe the proposed action; (2) advise other Federal and state agencies, potentially affected tribal interests, and the public of our intent to prepare an EIS; (3) announce the initiation of a 90-day public scoping period; and (4) obtain suggestions and information on the scope of issues and possible alternatives to be included in the EIS.

**DATES:** To ensure consideration, we must receive your written comments on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For approximate public meeting dates, see "Public Meetings" in the SUPPLEMENTARY INFORMATION section below.

**ADDRESSES:** Send your comments or request for information by any one of the following methods:

*U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103-1306; Attention: Laila Lienesch;

*Facsimile:* 505/248-6922 (Attention: Laila Lienesch);

*E-Mail:* [WindEnergyHCPComments@fws.gov](mailto:WindEnergyHCPComments@fws.gov); or

Toll-Free Telephone Message Service: ####/###-####

**FOR FURTHER INFORMATION CONTACT:** Laila Lienesch at 505/248-6494 or [Laila\\_Lienesch@fws.gov](mailto:Laila_Lienesch@fws.gov), Amelia Orton-Palmer at 303/236-4211 or [Amelia\\_Orton-Palmer@fws.gov](mailto:Amelia_Orton-Palmer@fws.gov), or Marty Tuegel at 505/248-6651 or [Marty\\_Tuegel@fws.gov](mailto:Marty_Tuegel@fws.gov).

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800/877-8337 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** Under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*; NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (Service), as lead agency, advise the public that we intend to prepare an environmental impact statement (EIS) on a proposed application, including a Habitat Conservation Plan (HCP), for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), and seek public input prior to developing a draft EIS for the potential issuance of an ITP.

### **Public Meetings**

To facilitate information transfer, we will hold nine public meetings in the following cities between July 2011 and August 2011:

Pueblo, Colorado – (*will insert dates prior to publication*)

Great Bend, Kansas – (*will insert dates prior to publication*)

Glendive, Montana – *(will insert dates prior to publication)*

Kearney, Nebraska – *(will insert dates prior to publication)*

Clovis, New Mexico – *(will insert dates prior to publication)*

Bismarck, North Dakota – *(will insert dates prior to publication)*

Woodward, Oklahoma – *(will insert dates prior to publication)*

Pierre, South Dakota – *(will insert dates prior to publication)*

Amarillo, Texas – *(will insert dates prior to publication)*

Austin, Texas – *(will insert dates prior to publication)*

Corpus Christi, Texas – *(will insert dates prior to publication)*

Specific times and locations of the public information meetings will be available on the Service's website — <http://www.fws.gov/southwest/> — and noticed in local newspapers at least 14 days prior to the meeting dates.

### **Reasonable Accommodations**

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Service at the address above no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

### **Background**

Section 9 of the Act and its implementing regulations prohibit take of animal species listed as endangered or threatened. The definition of take under the Act includes the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Section 10 of the Act, 16 U.S.C. 1539, establishes a program whereby persons seeking to

pursue activities that are otherwise legal, but could give rise to liability for unlawful take of federally protected species, may receive an ITP, which provides incidental take authorization to the ITP holder. To obtain an ITP, an applicant must submit an HCP containing measures that would minimize incidental take, including avoidance, and mitigate for the effects of any incidental take to the maximum extent practicable; and ensure that the taking is incidental to, and not the purpose of, an otherwise lawful activity (16 U.S.C. 1539(a)(1)(B) and 1539(a)(2)(A)). If we determine that an applicant has satisfied all permitting criteria and other statutory requirements, we intend to issue the ITP. At this time, the entity or entities that would serve as the applicant(s) for and be potentially permitted under an ITP have not been selected. However, the ITP is being sought by the Wind Energy Whooping Crane Action Group (WEWAG), a group of wind energy industry companies formed in 2009. Member companies include Acciona North America; Allele; Alternity; BP Renewables; Clipper Wind Energy; CPV Renewable Energy Company, LLC; EnXco; Duke Wind Energy; Horizon Wind Energy; Iberdrola Renewables; Infinity; MAP Royalty; NextEra Energy Resources; Renewable Energy Systems Americas; Terra-Gen; Trade Wind Energy; Element Power; Own Energy; and Wind Capital Group. Additional companies may become involved as the planning process proceeds. Hereafter, the term “applicant” is used to refer to the ultimate applicant(s) selected and the potential permittee(s). The proposed ITP would be granted for certain wind energy development, operation, and decommissioning or repowering-related activities undertaken within the permit area (described below).

WEWAG has sought to work in partnership with the Service to promote species conservation, while complying with environmental stewardship goals and policy

requirements that compel the development of clean and sustainable energy from wind resources. If successful, the HCP and subsequent ITP would allow take authorization for otherwise lawful activities, such as the development, construction, operation, and decommissioning or repowering, of commercial wind energy developments within the planning area. The HCP will contain a multifaceted approach, including but not limited to take avoidance, minimization of take (e.g., through proven and defined best management practices), and mitigation of the impacts of take through potential habitat preservation, restoration, and enhancement measures. The applicant must also ensure that adequate funding for implementation, including biological and compliance monitoring, is provided.

WEWAG is currently considering, for inclusion in the HCP, certain species listed as federally threatened or endangered, or having the potential to become listed during the life of the HCP, and having some likelihood of being taken by the applicant's activities within the proposed permit area. Those species include the endangered whooping crane (*Grus americana*), the endangered interior least tern (*Sterna antillarum athalassos*), the endangered piping plover (*Charadrius melodus*), and the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a candidate species. The final list of covered species may include all these species, a subset of them, and/or additional species, based on the outcome of this planning process.

The proposed planning area is a 200-mile-wide corridor determined by defining the center line of the whooping crane migration path corridor (100 miles on either side of the center line). This line is based on the database of confirmed whooping crane observations from the Cooperative Whooping Crane Tracking Program. This corridor

extends from the Gulf Coast of Texas north to the Canadian border and encompasses such cities as Houston, TX; Oklahoma City, OK; Wichita, KS; Bismarck, ND; Grand Island, NE; and Aberdeen, SD. In addition, the planning area includes the majority of the historic range of the lesser prairie-chicken, which extends the permit area beyond the 200-mile-wide whooping crane migration corridor to include parts of Kansas, Colorado, Oklahoma, New Mexico, and Texas.

### **Environmental Impact Statement**

The Service will be the lead Federal agency in the preparation of the EIS to satisfy the requirements of NEPA. With this notice of intent (NOI), we ask other Federal, State, tribal, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. Agencies that would like to request cooperating agency status on the EIS should follow the instructions for filing comments provided under the ADDRESSES section above.

The EIS will consider the proposed action (the issuance of a section 10(a)(1)(B) ITP, as supported by an HCP), no action (no HCP/no ITP), and a reasonable range of alternatives that accomplish the purpose and need of the proposal. A detailed description of the proposed action and alternatives will be included in the EIS. The alternatives to be considered for analysis in the EIS may include, but are not limited to, modified lists of covered species, differing land-coverage areas, activities which may be covered, and a variety of permit structures under consideration for the conservation program, described below in the Public Comment section. The EIS will also identify potentially significant impacts on biological resources, land use, air quality, water quality, water resources,

economics, and other environmental/historical resources that may occur from issuance of the ITP; indirect impacts as a result of implementing a proposed HCP, including any of the alternatives; and cumulative impacts. Various strategies for avoiding, minimizing, and mitigating the impacts of incidental take will also be considered.

Environmental review of the EIS will be conducted in accordance with the requirements of NEPA, its implementing regulations (40 CFR 1500-1508), other applicable regulations, and our procedures for compliance with those regulations. We furnish this notice in accordance with 40 CFR 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives they believe need to be addressed in the EIS. We invite comments from interested parties to ensure that the full range of issues related to the proposed permit application is identified.

### **Public Comments**

We are requesting information from other interested government agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning the following areas of analysis: Vegetation, Wildlife and Aquatic Resources, Special Status Species, Surface Waters and Floodplains, Hydrology and Groundwater, Wetlands and Waters of the U.S., Archeology, Architectural History, Sites of Religious and Cultural Significance to Tribes, Noise and Vibration, Visual Resources and Aesthetics, Economics and Socioeconomics, Environmental Justice, Air Quality (including greenhouse gas emissions and climate change), Geology and Soil, Land Use, Transportation, Infrastructure and Utilities, Hazardous Materials and Solid Waste Management, and Human Health and Safety.

In addition to the topics above, we are seeking comments on how a future ITP or ITPs may be structured. Currently there are four potential ITP structures being considered. The first involves a single habitat conservation plan that supports a single ITP held by a third party, referred to as a Programmatic HCP. This third-party ITP holder would enroll companies and their projects under the ITP. The third party would need to meet all general permit and ITP issuance criteria (50 CFR 13.21, 17.22(b), and 17.32(b)); and would be responsible for the administration of the HCP, including enrollment, compliance monitoring, biological monitoring, coordination of the mitigation, annual reporting, adaptive management, any ITP amendments, and annual coordination meetings. Under this ITP administrative structure the HCP and ITP would undergo NEPA and section 7 consultation once under the ESA prior to the ITP being issued. The ITP holder would administer the HCP without further Service involvement or reanalysis under NEPA or ESA.

The second ITP structure, referred to as an Umbrella HCP, under consideration is a single habitat conservation plan that supports multiple ITP holders. A single HCP would be developed, and all NEPA and ESA compliance would be done on the HCP. Each company would apply for separate ITPs under the Umbrella HCP. At the time a company applied for an ITP, the Service would evaluate the NEPA and section 7 consultation under ESA to ensure that the impacts and effects of the company's projects are consistent with the HCP's NEPA and ESA compliance documents, and the general permit issuance criteria and ITPs (50 CFR 13.21, 17.22(b), and 17.32(b)). The Service would also announce a Notice of Intent to issue the ITP in the Federal Register and take public comment on the application for 30-days (16 U.S.C. 1539(c)). Issuance of ITPs

could take up to 90 days to process. Each company holding an ITP would be responsible for implementation of their minimization and mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, and participation in annual coordination meetings. The Service would be responsible for issuance of new ITPs, coordination of the mitigation, and conducting annual meetings with ITP holders. This ITP administrative structure would have continued Service involvement during the implementation of the HCP.

The third ITP structure, referred to as the Primary Permit HCP, also involves a single HCP that supports an initial ITP held by a third party. Authorities in the initial ITP are then transferred to individual companies through the issuance of ITPs specific to their projects. A single HCP would be developed and all NEPA and ESA compliance would be completed on the HCP prior to issuance of the initial ITP. All compliance and issuance criteria would be reviewed prior to any transfer of authorities to an individual company. The Service would transfer the authorizations in the initial ITP, in whole or in part, based on a joint submission by the initial ITP holder and the proposed transferee, so long as the Service determines that the transferee is qualified to hold an ITP (50 CFR 13.21, 17.22(b), and 17.32(b)) and provides adequate written assurance that it will provide sufficient funding and implement the relevant terms and conditions of the ITP (50 CFR 13.25). The Service anticipates publishing a Notice of Intent to issue an ITP with transfer authorities in the Federal Register and take public comments on the application for 30 days. Issuance of each ITP may take up to 90 days to process. The holder of the initial ITP would be responsible for the coordination of all activities among

the transferees. Each company holding an ITP would be responsible for implementation of their minimization and mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, participation in annual meetings, and coordination with the initial ITP holder. The Service would be responsible in processing the transfers and reviewing annual reports. This ITP administrative structure would have some continued Service involvement during the implementation of the HCP, but it would be less than under the Umbrella HCP and more than under the Programmatic HCP.

The fourth ITP structure, referred to as the Co-Permitted HCP, also involves a single HCP that supports an ITP, but all parties are named as co-permittees on the ITP. A single HCP would be developed and all NEPA and ESA compliance would be completed on the HCP prior to issuance of the initial ITP. Current members of WEWAG (or those who join prior to permit application) would be named as permittee in the incidental take permit application. Assuming the Service found that the HCP met the ESA's permit issuance criteria, the Service would issue a single or master incidental take permit naming each of the WEWAG members as a participating permittee (co-permittee). Similar to the programmatic approach, the incidental take permit would authorize each co-permittee's projects located within the permit area. Prior to undertaking any new project, a co-permittee would submit to the Service a prescribed form indicating how its project complies with the incidental take permit and that any required mitigation has been paid to the appropriate entity. The Service would have the authority to review each project and would stay engaged during the implementation of the HCP. Each company named as a co-permittee would be responsible for implementation of their minimization and

mitigation measures, compliance monitoring and biological monitoring, annual reporting, adaptive management procedures, and participation in annual coordination meetings. Additional NEPA and ESA section 7 would not be necessary, as each permittee would be fully authorized under the permit.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not provide information useful in determining the issues and the impacts to the human environment in the draft EIS. The public will also have a chance to review and comment on the draft EIS when it is available (a notice of availability will be published in the Federal Register).

You may submit your comments and materials by one of the methods described above under the ADDRESSES section at the beginning of this notice. Written comments will also be accepted at the public meetings, although these public meetings are primarily intended to provide additional information and provide a chance for the public to ask specific questions concerning the proposed HCP and EIS.

### **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other

personal identifying information in your comment, you should be aware that the entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

/s/Joy E. Nicholopoulos (Acting)

Regional Director, Region 2

Albuquerque, New Mexico

**~~Draft Environmental Impact Statement and Habitat Conservation Plan for  
Commercial Wind Energy Developments within Nine States.~~**