

FINDING OF NO SIGNIFICANT IMPACT

Osage Wind Project, Osage County, Oklahoma

The U.S. Fish and Wildlife Service (the Service) proposes to issue a 30-year permit (ITP) for take of Bald Eagles (*Haliaeetus leucocephalus*) that is incidental to otherwise lawful activities associated with the operation of the Osage Wind Project in Osage County, Oklahoma (Project), under authorization of the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668d and 50 Code of Federal Regulations [CFR] § 22.26). The permit would authorize non-purposeful (incidental) take of up to 15 Bald Eagles every 5 years during the 30-year life of the permit. The Service will monitor the Project's eagle take, coordinate with the Applicant every 5 years to reassess the ITP (eagle mortality rates, measures to reduce take, compensatory mitigation, and eagle population status, as needed), and adjust the ITP as necessary to maintain compliance with the preservation standards of the Bald and Golden Eagle Protection Act.

The Service prepared an Environmental Assessment (EA) that incorporates by reference the Service's Programmatic Environmental Impact Statement for the Eagle Rule Revision, December 2016 (PEIS; Service 2016) to analyze the environmental effects of three permit alternatives and the no action alternative for authorizing take of eagles. The Service incorporates the EA by reference into this Finding of No Significant Impact (FONSI). Together they constitute the Service's NEPA finding.

As the responsible official, I have evaluated the effects of the proposed action and alternatives relative to the definition of significance established by the CEQ Regulations (40 CFR 1508.13). I have reviewed and considered the EA and documentation included in the project record, and I have determined that the proposed action and alternatives will not have a significant effect on the quality of the human environment. As a result, no environmental impact statement will be prepared. My rationale for this finding is as follows.

Purpose and Need for Action

The purpose of this action is to issue an Eagle Act permit to Osage Wind, LLC that will authorize potential lethal take of Bald Eagles that is incidental to otherwise lawful activities associated with the operation of the Osage Wind Project. The need for the action is to respond to WSMR/DTRA's application requesting a permit to legally authorize that take.

The Service has analyzed three alternatives for the proposed action, as well as the no action alternative:

Alternative 1 – No Action

The Service would deny the Applicant a Bald Eagle ITP, and the Project would continue to operate without an ITP.

Alternative 2

Issue a 5-year Bald Eagle ITP: The Service would issue a ITP for the non-purposeful take of up

to 15 Bald Eagles for the 5-year period, which would require renewal after 5 years.

Alternative 3 (proposed alternative)

Issue a 30-year Bald Eagle ITP: The Service would issue a 30-year Bald Eagle ITP allowing non-purposeful take of Bald Eagles, with associated conditions.

Alternative 4

Issue a 30-year Bald Eagle ITP with additional conditions: The Service would issue a 30-year Bald Eagle ITP allowing non-purposeful take of Bald Eagles, with associated conditions plus additional mitigation and post-construction monitoring.

The Service selected Alternative 3 as the proposed action over the other alternatives

Component	Alt. 1	Alt. 2	Alt. 3	Alt. 4
Predicted take	3	3	3	3
ITP length	0	5 years	30 years	30 years
Mortality monitoring	3 years, voluntary	First 3 years	First 3 years plus years 9, 14, 19, 24, 29	First 3 years plus years 9, 14, 19, 24, 29
% turbines monitored	Random 30%, voluntary	Random 30%	Random 30%	Random 50%; increase search effort
Comp. mitigation	None	Adaptive Management per ECP	Adaptive Management per ECP	Retrofit 30power poles
Turbine curtailment	None	Adaptive Management per ECP	Adaptive Management per ECP	Adaptive Management per ECP

The proposed action (Alternative 3) allows the Service to monitor and manage take of bald eagles throughout the life of the Project without significantly affecting regional or local eagle populations. It is preferable to the other alternatives for the following reasons.

- Alternative 1 does not allow for authorized take at the Project and thus would not require implementation of any conservation measures or other mitigation.
- Alternative 2 does not allow for authorized take throughout the life of the Project without requiring the applicant to renew the permit every 5 years. The requirement to renew every 5 years creates an unnecessary burden on the applicant and may require additional NEPA analysis. The Service would select this alternative if we believed the degree of uncertainty regarding the impacts of issuing a Bald Eagle ITP to the Applicant was too high to meet eagle preservation standards. This is not the case.
- Alternative 3 guarantees at least an additional 5 years of post-construction monitoring that allow us to reassess mortality rates, take limits, the need for mitigation, and eagle

population status. This Alternative also provides the opportunity to make adjustments to the ITP and its conditions as necessary after each review.

- Alternative 4 imposes additional conditions that provide additional mitigation beyond what is required by regulation and policy to ensure the preservation of eagles. Additional monitoring may find carcasses that may otherwise go undetected. In addition, additional mitigation that would consist of retrofitting power poles would provide a conservation benefit to the species. However, there is no scientific or regulatory justification for imposing additional conditions, this Alternative creates an unnecessary burden on the applicant.

The Service concludes that issuing an eagle permit under Alternatives 2, 3, and 4 would result in the following non-significant environmental, social, and economic effects:

Environmental effects would be limited to the direct take of Bald Eagles (fatalities via collisions with turbines), which is well within the limits of the take thresholds analyzed in the in the 2016 PEIS. Small changes in local population dynamics may occur under any Alternative but we expect the overall effect of Bald Eagle take at the Project to be minor. The Service does not anticipate that nest disturbance or territory loss effects to occur at the Project. The Service would not authorize any take of Golden Eagles at the Project because take of golden eagles is not likely to occur. The EA concludes that there will be no significant effects on migratory birds, including any threatened and endangered bird species that could potentially occur in Osage County.

On August 25, 2017, the Service emailed and mailed an information handout and a letter to all Tribes within the Southwest Region, providing details on the Project, the regulatory process, and informing them that the Draft EA would be posted to the Migratory Bird Program Permits NEPA Reviews webpage. On May 5, 2018, the Service released the Draft EA for public comment, identifying three alternatives, including the preferred alternative. The Draft EA was available for 30 days and it was posted on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage. The Service received responses to the Draft EA from the seven Tribes listed below. Four responses indicated no significant concerns. One Tribe does not support the issuance of take permits to non-tribal or privately held entities. Two Tribes had concerns over study design and monitoring, which we reviewed, carefully considered, and addressed in our response to those Tribes.

- Pawnee Nation of Oklahoma
- Caddo Nation of Oklahoma
- Cherokee Nation
- Cheyenne & Arapaho Tribes
- Comanche Nation
- Kiowa Tribe
- Iowa Tribe of Oklahoma

Cumulative effects

The estimated 3 Bald Eagles per year, and including estimated take of 1.17 Bald Eagles resulting from other permitted projects in the LAP area (4.07 estimated total take) is substantially below the Central Flyway Eagle Management Unit and Local Area Population cumulative allowable take of 10.34. Small changes in population dynamics may occur, but the Service concludes that

the overall effect of Bald Eagle take at the Project under the proposed alternative will be minor. We do not expect nest disturbance or territory loss effects to occur at the Project. We also do not expect any take of Golden Eagles to occur at the Project.

Measures to mitigate and/or minimize adverse effects would be required in the proposed action. In addition, the applicant has already implemented several measures in anticipation of applying for a permit. These measures include:

Avoidance and Minimization

- The Applicant altered proposed turbine locations and reduced the number of turbines prior to construction to reduce risk to eagles.
- The Applicant incorporated minimization and avoidance recommendations from the Eagle Conservation Plan Guidance.
- Site development that involves additional turbines would require additional NEPA analysis to assess take of eagles and may require amendments to the conditions set forth in this permit or development of a new permit application.

Monitoring

- The terms and conditions outlined in a permit from the Service authorizing incidental take, would require all injury and fatality monitoring studies to meet design approval and third party requirements as outlined in the 2016 Eagle Rule. One year of injury and fatality monitoring will be required during each five-year review period
- At each 5-year permit review, based on estimated actual take during the preceding 5 years, the Service will, if appropriate, adjust predicted (not-to-exceed) take for the next 5 years, and maximum authorized take over the full 30-year permit. The Service will estimate actual take based on the observed levels of take at the project. Once this review is complete, the Service will adjust compensatory mitigation requirements accordingly.

Compensatory Mitigation

- Because we conclude that the predicted Bald Eagle take will be below the thresholds for take, compensatory mitigation is not required.
- The Applicant undertook voluntary mitigation by funding a lead-abatement education program through the Sutton Avian Research Center.

The Service concluded that neither the proposed action nor any of the alternatives will have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because:

The Project is already built and operational. Issuing a permit authorizing incidental take of Bald Eagles under any of the action alternatives will not affect wetlands or floodplains.

The Service has thoroughly coordinated the proposed action with all interested and/or affected parties. Parties contacted include:

In August 2017, the Service emailed and mailed an information handout and a letter to the

Oklahoma State Historic Preservation Office, Oklahoma Department of Wildlife Conservation, and all Tribes within the Southwest Region. In May 2018, the Service released the EA for public comment for 30 days and posted it on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage. The Service received responses to the Draft EA from seven Tribes.

I conclude, based on the analysis of potential environmental impacts in the attached EA, that issuing a 50 C.F.R. § 22.26 Eagle Act incidental take permit to Osage Wind LLC will not have any significant effects on the human environment:

For this proposal, the Service's authority is limited to authorizing incidental take of eagles by the Project, and not Project construction, which is complete. The permit, with its required conditions, will not have any significant effects on natural resources, environmental justice, floodplains, prime and unique farmlands, wetlands, air quality, climate change, communication signals, Federal Aviation Administration transportation, geology/hydrogeology, human health and safety, land use, noise, radar signals, sub-surface minerals, vegetation, visual resources, waters of the U.S., socioeconomic resources, or any other aspect of the human environment.

Therefore, it is my determination that the proposal 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 environmental impact statement is not required. The Service has prepared an environmental assessment in support of this finding. The EA and FONSI are available upon request to the FWS facility identified above or on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage.

References: Final Environmental Assessment for the Proposed Issuance of a Bald Eagle ITP for the Osage Wind Project, Osage County, Oklahoma 2018;



Chief, Migratory Bird Program
U.S. Fish and Wildlife Service, Southwest Region



Date

