



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–MB–2017–N185; FF06M00000–XXX–FRMB48720660190]

Draft Environmental Assessment for the Potential Issuance of a Bald Eagle Take Permit for Courtenay Wind Farm, Stutsman County, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of a draft Environmental Assessment (DEA) under the National Environmental Policy Act (NEPA) for the potential issuance of a take permit for bald eagles pursuant to the Bald and Golden Eagle Protection Act (Eagle Act), in association with the operation of the Courtenay Wind Farm (project) in Stutsman County, North Dakota. The DEA was prepared in response to an application from Northern States Power Company–Minnesota, doing business as Xcel Energy (applicant), for a 5-year take permit for bald eagles (*Haliaeetus leucocephalus*) under the Eagle Act. The applicant would implement a conservation program to avoid and minimize the project’s impacts to eagles, as described in the applicant’s Eagle Conservation Plan. We invite public comment on the DEA.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Courtenay Wind Farm DEA:

- *Internet:* Documents may be viewed on the internet at <https://www.fws.gov/mountain-prairie/wind/>.
- *Email:* FW6WindEnergy@fws.gov. Include “Courtenay Wind Farm DEA” in the subject line of the message.
- *U.S. Mail:* Courtenay Wind Farm DEA, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Hillary White, P.O. Box 25486 DFC, Denver, CO 80225.
- *Hand-Delivery/Courier:* Courtenay Wind Farm DEA, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Hillary White, 134 Union Blvd., Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Hillary White, Migratory Bird Program, at FW6WindEnergy@fws.gov (email) or 303–236–4770 (telephone); or Brian Smith, at FW6WindEnergy@fws.gov (email) or 303–236–4403 (telephone). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals. The Federal Relay Service is available 24 hours a day, 7 days a week, for you to leave a message or question for the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service (Service) is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d; Eagle Act) for a bald eagle (*Haliaeetus leucocephalus*) take permit from Northern States Power Company–Minnesota, doing business as Xcel Energy (applicant), for a 5-year take permit for bald

eagles under the 2009 regulations (74 FR 46836, September 11, 2009). The Service published changes to eagle permitting regulations (81 FR 91494, December 16, 2016), which took effect on January 15, 2017. Applicants who submitted permit applications before July 14, 2017, may choose to be considered for issuance of an eagle take permit under either the original 2009 regulations or the 2016 revised regulations (81 FR 91494). The applicant submitted the permit application on April 11, 2016, and has chosen to be considered under the 2009 regulations. The project is an existing operational wind facility in Stutsman County, North Dakota. The application includes an Eagle Conservation Plan (ECP) as the foundation of the applicant's permit application. The ECP describes actions that have been taken, as well as proposed future actions, to avoid and minimize adverse effects on eagles.

We have prepared this DEA to evaluate the impacts of issuing or not issuing the eagle take permit for compliance with our Eagle Act permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26, as well as impacts of implementing the supporting ECP, which is included as an appendix to the DEA.

Background

The Eagle Act allows us to authorize bald eagle take “for the protection...of agricultural or other interests in any particular locality.” The 2009 regulations authorize the limited take of bald eagles under the Eagle Act, where the take to be authorized is associated with otherwise lawful activities (74 FR 46836). The Eagle Act's implementing regulations define “take” as to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” individuals, their nests and eggs (50 CFR 22.3); and “disturb” is further defined as “to agitate or bother a bald or golden

eagle to a degree that causes ... (1) injury to an eagle, ... (2) a decrease in its productivity, ... or (3) nest abandonment” (50 CFR 22.3). The project is predicted to result in recurring bald eagle mortalities over the life of the project, so the appropriate type of take permit is the permit under 50 CFR 22.26.

We may consider issuance of eagle take permits if (1) the incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act—providing for stable or increasing breeding populations; and (3) the take has been avoided and minimized to the degree achievable through implementation of Advanced Compensation Practices, and the remaining take is unavoidable. The Service must determine that the direct and indirect effects of the take, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Proposed Action

The permit applicant, Northern States Power Company—Minnesota, doing business as Xcel Energy, is operating an approximately 200.5-megawatt commercial wind energy facility in Stutsman County, North Dakota. The 100-turbine project, sited entirely on private land, became operational on December 1, 2016.

The applicant developed an ECP based on our guidance contained in the *Eagle Conservation Plan Guidance Module 1: Land-Based Wind Energy Version 2 (Service 2013)* (ECP Guidance)

(<https://www.fws.gov/migratorybirds/pdf/management/eagleconservationplanguidance.pdf>).

As recommended in the Service's ECP Guidance, the applicant's plan outlines avoidance and minimization measures, contains a risk assessment, and includes advanced conservation practices and adaptive management. The applicant submitted the ECP as part of the permit application, and if we issue the permit, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of bald eagle fatalities from project operations and compared that risk to the conservation measures to which the applicant committed. We used our Collision Risk Model to estimate the number of annual bald eagle fatalities resulting from operation and maintenance of the project. This is an essential step in the Service's evaluation of an application for a permit for take of eagles because issuing criteria require permitted take to comply with the Eagle Act's preservation standard. In the DEA, we evaluate the risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects of issuing a permit and a No Action alternative.

National Environmental Policy Act Compliance

Our consideration of whether or not to issue a 5-year ETP is an action subject to the National Environmental Policy Act (NEPA). Our DEA analyzes the risk of bald eagle take associated with operation and maintenance of the project, and assesses the potential effects of permit issuance and a No Action alternative (i.e., do not issue an ETP) on the human and natural environment.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed in **ADDRESSES**. We will consider

public comments on the DEA when making the final determination on NEPA compliance and permit issuance.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereupon to determine whether the application meets the permitting requirements under the Eagle Act, applicable regulations, and NEPA requirements. Upon completion of that evaluation, we will select our course of action.

Authority

We provide this notice under section 668a of the Eagle Act (16 U.S.C. 668–668d) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR § 46.300).

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USFWS Mountain-Prairie Region.

Lakewood, Colorado.

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