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Comment on Information Collection -1018-0022

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Please find attached AWEA's comments. Thanks in advance for your consideration.



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AWEA Comments on Information Collection.pdf

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**Re: Comments of the American Wind Energy Association on the Proposed Information Collection;
Federal Fish and Wildlife Permit Applications and Reports – Migratory Birds and Eagles**

Submitted via e-mail to Madonna_baucum@fws.gov

The American Wind Energy Association (AWEA)¹ submits these comments in response to the U.S. Fish and Wildlife Service's (Service) February 24, 2017 notice and request for comments on the Proposed Information Collection, Federal Fish and Wildlife Permit Applications and Reports-Migratory Birds and Eagles,² which seeks input regarding the revision of Information Collection requirements associated with OMB control numbers 1018-0022 (Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles) and 1018-1067 (Eagle Take Permits and Fees).

¹ AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.

² Fish & Wildlife Serv., *Proposed Information Collection; Federal Fish and Wildlife Permit Applications and Reports-Migratory Birds and Eagles*, 82 Fed. Reg. 11,599 (February 24, 2017) ("Information Collection").



AWEA, as the trade association representing the collective interests of the wind industry nationally, has a significant interest in the Service's processes under the eagle permit program. For instance, AWEA has been significantly involved in the Service's creation and restructuring of eagle permits under the Bald and Golden Eagle Protection Act, including through the submission of extensive comments. We encourage the Service to incorporate the comments below in order to ensure that the Information Collection yields valuable information regarding the eagle permit program while also minimizing the burden of the collection on applicants/permittees. This will help ensure the eagle permit program is workable for regulated entities while also providing protection for eagles.

I. Comments

The Information Collection seeks comments on whether the information in the proposed collection is necessary and if such information will have practical utility. The practical utility of the information necessarily includes a consideration of the burden on entities in collecting the information. The Information Collection also seeks comment regarding methods to enhance the quality, utility, and clarity of the information and ways to minimize the burden of this collection on applicants/permittees. The following areas are ones that AWEA has identified in the Service's December 16, 2016, revisions to the eagle permit regulations (Eagle Rule), 81 Fed. Reg. 91494 (Dec. 16, 2016), that are overly burdensome with respect to the collection of information and could be minimized to reduce that burden.



A. Monitoring

AWEA believes that, as it stands, there is limited utility to the Information Collection in the Eagle Rule on eagles for life-of-facility monitoring. The burden on the regulated community for such monitoring is excessive. Moreover, overly burdensome monitoring requirements that do not consider the value of conservation benefits could discourage permit applications.

The Service does not provide in the Eagle Rule sufficient evidence that life-of-the project monitoring is an effective use of resources that will actually confer conservation benefits to eagles. In addition, this level of monitoring would be exorbitantly expensive, administratively challenging, and overall impracticable. The high cost of life-of-the project monitoring is especially disconcerting given that the Service has not indicated that such a burden would actually further the purpose of the permit program. As we stated in our comments on the proposed Eagle Rule, such monitoring could cost wind project applicants up to \$4,411,000. These costs may exceed the cost of mitigation to simply prevent any potential issues before they occur. Accordingly, AWEA recommends that the Service consider, in order to create a workable permit program, the costs and benefits of the monitoring requirements.

B. Pre-Construction Surveys

The Eagle Rule also requires permit applicants to use Service-approved protocols for conducting pre-application surveys, fatality predictions, and monitoring, unless the Service waives this requirement. If the Service has officially issued or endorsed a survey, modeling, or other data quality standard, those



standards and protocols must be used. In effect, permit applicants and permittees are now required to conduct pre-construction surveys according to the requirements in Appendix C of the Eagle Plan Conservation Guidance.

This would include, among other things, two years of pre-constructions studies across all seasons, sampling of at least 30% of the area within 1 km of the wind turbines to be covered using 800 m radius point counts and 20 hours per turbine as the optimal level of annual sampling. The utility of such information is highly limited. For instance, if an applicant or permittee has a site where the presence of eagles are very unlikely except for a certain season (i.e., winter), the practical utility of requiring year-round and highly burdensome surveying is obviously not necessary. This is exacerbated by the fact that many wind projects will simply not be able to meet these burdens due to the excessive costs. In short, the burden of this Information Collection far outweighs its practical utility.

C. Low-Risk Permit

AWEA strongly believes the Service should develop a low-risk permitting option. It is wholly unnecessary to subject project proponents to the burdensome requirements of seeking a permit if their project poses a very low risk. This option would further provide permittees with monitoring and other requirements that are less onerous than projects where risk of eagle take is high. Perhaps most importantly, separate low-risk permits would allow project proponents and the Service to focus efforts and resources on achieving conservation benefits from projects that are more likely to take eagles.



D. Third-Party Monitoring

The practical utility of requiring third-party monitoring of all long-term eagle take permits, as required in the Eagle Rule, is simply not justified in light of the excessive burden such monitoring imposes on permittees. This is especially true given the fact that such third-party monitoring has not been shown to be an effective best management practice or demonstrated as necessary for the vast majority of projects. There also has been no showing in the record that observation and reporting under the eagle permitting process without the use of third-party monitors has been biased or misleading when performed by a permittee, so there is no justification for imposing the additional cost of a third-party monitor on the regulated community. In short, the Service should revise this requirement to reduce the burden on permittees.

E. Local Area Populations

The manner in which the Service conducts the Local Area Population (LAP) analysis leaves project applicants and permittees with insufficient information regarding the allowable take limits and the extent of unauthorized take occurring within the LAP. The Eagle Rule provides that if the LAP analysis demonstrates that a facility's estimated take will result in cumulative authorized take in excess of 5% of the LAP or unauthorized take of more than 10% of the LAP, an applicant may need to provide additional compensatory mitigation. This is not only more burdensome than similar programs under conservation statutes but has limited utility given that an applicant has insufficient information regarding the LAP and unable to make accurate determinations regarding risk. In addition, an



applicant has no control over the amount of unauthorized take occurring within the LAP and, therefore, is not provided any certainty because determinations must be based on actions by other, unknown parties. The LAP analysis, which the Service conducts, thus creates significant uncertainty and overly burdensome costs on permit applicants.

F. Waivers

AWEA believes there is value in the waivers of Information Collection pursuant to the Eagle Rule. For instance, waivers could help reduce the Information Collection burden on respondents when further information is simply not warranted given the limited impacts a project has on eagle populations. Waivers would be especially critical if the Service does not implement a low-risk permit pathway, discussed above, in a timely manner—waivers could be granted to facilities where eagle interactions are minimal. Without such a waiver, these facilities would be required to conduct extensive and costly surveys. Additionally, waivers should be made for operating facilities where the new requirements for pre-construction surveys are no longer attainable.

G. Burden Estimate

With respect to the accuracy of the Service's estimate of the burden for the Information Collection, AWEA is concerned that the numbers are significantly underestimated. Indeed, the hours and costs required by AWEA members and other entities to comply are far greater than the figures on which the Service based its estimates. Wind developers and other project proponents will



accordingly be subjected to a significantly greater burden than estimated and this should be considered in the evaluation of the practical utility of the Information Collection.

II. Conclusion

For the above reasons, AWEA encourages the Service to consider our suggestions so that any Information Collections yields valuable information regarding the permit program while also balancing the cost and burden of such collection. This would help ensure that the eagle permit program is workable and provide protection for eagles.

Sincerely,

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