

MEMORANDUM
BY ELECTRONIC MAIL

To: Wind Turbine Advisory Committee

From: Legal Subcommittee

Date: July 17, 2008

Re: **Update on Legal Subcommittee Work**

In preparation for the third meeting of the Wind Turbine Guidelines Advisory Committee, the Legal Subcommittee has prepared the following outline of a white paper that will summarize the applicability of federal wildlife laws to the siting, construction, and operation of wind turbine facilities, and that will summarize the mechanisms available under those laws to manage the risk of noncompliance.

1. Define scope of authority to regulate wildlife under federal law and consequences of noncompliance

1.1 Statutes covered

1.1.1 Endangered Species Act

1.1.2 Migratory Bird Treaty Act

1.1.3 Bald and Golden Eagle Protection Act

1.1.4 Clean Water Act Section 404

1.1.5 The Fish and Wildlife Coordination Act

1.1.6 The Lacey Act

1.1.7 Tariff Classification Act

1.1.8 Marine Mammal Protection Act

1.2 Regulation and consequences of direct species impacts

1.3 Regulation and consequences of habitat-related species impacts

2. Identify methods by which noncompliance can be avoided or liability for noncompliance can be mitigated or avoided

2.1 Sources of liability avoidance and mitigation

- 2.1.1 Statutory approaches
- 2.1.2 Regulatory approaches
- 2.1.3 Judicial approaches
- 2.1.4 Guidance/informal agency approaches
- 2.2 Liability avoidance and mitigation under the Endangered Species Act
 - 2.2.1 Habitat conservation plans and incidental take permits
 - 2.2.2 Section 6 state cooperative agreements
 - 2.2.3 Conservation agreements
 - 2.2.4 Bird letters
 - 2.2.5 Safe harbor agreements
 - 2.2.6 Candidate conservation agreements
 - 2.2.7 General conservation plans
 - 2.2.8 Conservation banking
 - 2.2.9 4(d) rules
- 2.3 Liability avoidance and mitigation under the Migratory Bird Treaty Act
 - 2.3.1 Bird letters
 - 2.3.2 Special purpose permits
- 2.4 Liability avoidance and mitigation under the Bald and Golden Eagle Protection Act
 - 2.4.1 Bird letters
 - 2.4.2 Bald eagle regulation approaches
- 2.5 Liability avoidance and mitigation under Clean Water Act Section 404
- 2.6 Liability avoidance and mitigation under other statutes