



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



APR 26 2004

FWS/DHRC/BAPHC

Memorandum

To: Regional Directors, Regions 1-7

From: Director *Steve Williams*

Subject: Implementation of Service Voluntary Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines

On July 10, 2003, the U.S. Fish and Wildlife Service provided to the Regions and the general public our voluntary Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines. The Interim Guidelines are to be evaluated over a 2-year period, and then modified as necessary based on their performance in the field and on the latest scientific and technical discoveries developed in coordination with industry, States, academic researchers, and other Federal agencies. A Notice of Availability and request for comments was published in the Federal Register simultaneously with the release of the guidance to Service personnel. By memo to the Regions dated May 13, 2003, and attached to the guidance document released on July 10, 2003, we provided general guidance for implementation of the Interim Guidelines by our field personnel.

Comments received during the first 8 months of the 2-year comment period indicate that further explanation is needed concerning the voluntary and flexible nature of the Interim Guidelines. The purpose of this memorandum is to provide more detailed direction to Service personnel on how the Guidelines should be applied.

Please ensure that all field personnel involved in review of wind energy development proposals receive copies of this memorandum. For further information or to provide comments on the Interim Guidelines, contact Dr. Benjamin N. Tuggle, Chief, Division of Habitat and Resource Conservation, at (703)358-2161, or Brian Millsap, Chief, Division of Migratory Bird Management, at (703)358-1714.

Attachment

Instructions for Implementation of Service Voluntary Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines

General

The guidance is intended to be general in nature and applied with local interpretation based on local conditions. This is necessary because the guidance is national in scope, and because of the great variance in geography and habitats in which wind energy developments may be proposed as well as the variable nature of potential impacts to trust resources. The Interim Guidelines are not to be construed as rigid requirements, which are applicable to every situation, nor should they be read literally. Recommendations made under the Interim Guidelines should be based on locally applicable scientific data, local knowledge and expertise, technological feasibility, and a reasonable interpretation of the available information. The teams of professionals recommended for pre-development site evaluations should make recommendations on site selection, pre-development data collection, site design, and post-construction monitoring based on local conditions, using the Interim Guidelines as a general guide. Field personnel providing recommendations on projects that are at other stages of development should do likewise. Service personnel should be able to provide a rationale for their recommendations. Likewise, project proponents should be expected to provide supporting documentation if Service recommendations are deemed infeasible for technological reasons.

Site Evaluation and Ranking

The guidance recommends that all potential wind energy development sites within a geographic area be evaluated and ranked prior to selecting a site for development, using the site evaluation process provided. This recommendation does not apply where a site was leased for development prior to the availability of the Interim Guidelines. Potential wind energy development sites have a number of pre-requisites, including sufficient wind, availability through lease, and access to the transmission grid. Evaluation of sites, which do not possess these attributes, should not be recommended. An exception would be in situations where the evaluation of a single such site is needed to provide a reference site for use in the ranking system, and no site with true potential for development is adequate. The size of the geographic area in which all potential development sites should be evaluated will vary depending on the above attributes, the continuity of similar habitat, and the wildlife species potentially impacted. It may be an entire State, a small portion of a State, or a few thousand acres. In the case of small projects where only a single site is available, such as some Native Alaskan bush communities, evaluation and ranking of multiple sites would not be applicable.

Release of Site Evaluation Data Under the Freedom of Information Act (FOIA)

The wind energy industry has expressed concern regarding the possible release of information on potential development sites under a FOIA request, citing the intense competition within the industry for developable locations. Service personnel should make every effort to protect the companies they work with from any sort of competitive harm. Customarily, government agencies protect proprietary information that is voluntarily provided by industry and identified by them as having the potential to cause competitive harm if released, though the Service is not authorized to make any guarantees under FOIA. Such information may be protected under exemption 4 of FOIA (confidential business information). When working with the industry, Service staff should request that companies identify any and all such information up front, and provide a brief explanation as to why the information is deemed 'confidential business information' and what competitive harm could ensue through release. If an employee receives a request (whether FOIA or any other type of request) for such information, they should alert the appropriate FOIA staff and the Office of the Solicitor prior to responding. Though release of this type of information is unlikely under FOIA, companies may also file a reverse FOIA suit to prevent any such release. Service personnel should note that they may be subjected to litigation through inappropriate release of information identified as 'confidential business information'.

Pre- and Post-Construction Studies

Where information is considered insufficient to make informed decisions about development of a site, recommendations for collection of additional information should be based on the local situation. As an example, the guidance recommends 3 years of data as a standard for determining the presence and/or magnitude of bird and bat migration in areas of high seasonal concentrations. This recommendation is not intended to be a strict requirement for all areas, or if a shorter collection period can be expected to yield sufficient data. Likewise, recommending the use of acoustic, radar, and infrared detection equipment as mentioned in the guidance is not a strict requirement at all locations and under all conditions. However, where risk is considered sufficiently high, and available data and/or local knowledge indicate that weather variations, changing flight paths, or variable timing of migration warrant it, 3 years of data collection using the most appropriate tools available should remain the standard. The guidance states that the intended time frame for post-construction monitoring (recommended at all sites) is not expected to exceed 3 years. This does not mean that 3 years of monitoring should be recommended at all sites. A single year of monitoring through all seasons may indicate that 1 year is sufficient, or that additional monitoring is needed. Again, professional evaluation of the local situation is required.

Small Wind Energy Developments Funded Through the Farm Bill

The U.S. Department of Agriculture is currently providing grants for development of small, single-owner or cooperative wind energy facilities through Section 9006 of the Farm Security and Rural Investment Act of 2002. The purpose of this program is to help agricultural producers and rural small businesses purchase renewable energy systems and make energy efficiency improvements. Most of the proposed wind power facilities funded under this program are for single or a few turbines with limited siting options. Being federally funded, they must also

undergo a National Environmental Policy Act evaluation. Recommendations on siting and studies for such facilities under the Interim Guidelines should not suggest team-based evaluation of multiple potential development sites (the ranking system), pre-development studies beyond a basic site evaluation for wetlands, migratory birds and bats, endangered/threatened species, etc., or post-development monitoring programs. Recommendations on site development and turbine design and operation should be appropriate to the location and size of the proposed facility. Any large-scale, multi-turbine facilities proposed under section 9006 should be evaluated in the same manner as those proposed by wind energy companies.

Summary

Development of wind energy is a priority of the Secretary of the Interior. When properly sited and designed, wind energy development has the potential to reduce the loss of trust resources and their habitats by replacing other, more disruptive forms of energy development. The intent of the Service is to have professional biologists and professional wind engineers working together at the local level to develop this energy source in a manner that protects trust resources. This should be accomplished through flexible application of the voluntary Interim Guidelines based on local conditions, local knowledge, locally applicable scientific data, and technological feasibility. Please make every effort to accommodate requests for assistance in evaluating potential development sites and providing recommendations for site design and operation within the constraints of your budget and other commitments. Any problems encountered or recommendations for improvement should be noted and provided to the Regional and Washington offices for use in developing final guidelines at the conclusion of the 2-year public comment period in July 2005.

Evaluation of wind energy development is a new challenge in most areas of the country, and the Interim Guidelines are a work in progress. We are in the process of planning a series of multi-stakeholder workshops on the use of the Interim Guidelines in the coming months. The workshop conducted in Region 5 in September of 2003 was considered a great success. We encourage all Regions to provide the opportunity for their field personnel to participate when a workshop is held in your area.

Revised:04/23/2004:ClintRiley:ce:202-208-6394