

**Meeting to Discuss Guidelines for Reducing Bird and Bat Impacts
From Wind Development in California**
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Thank you Susan [Sanders] inviting me. Unfortunately, Dr. Mike Green, Nongame Landbird Program Coordinator, FWS Region 1, Portland, unable attend today.

I. Avian Population Status

- Status U.S. bird populations of concern. 1995, FWS listed 124 “nongame species management concern” representing early warning system since possible next step is listing birds as “candidates” under ESA – scenario we’d prefer to avoid.
- 2003, FWS published “birds of conservation concern” as mandated by law. Number bird populations in trouble increased from 124 to 131 species. Not good news.
- In addition, 77 endangered and 15 threatened birds ESA – numbers continue to increase.
- Recapping: 836 species, >223 in trouble. In addition, Service essentially lacks data on status 1/3 N. Am. bird populations. Management challenge!

II. Development of FWS Voluntary, Interim Guidelines

- 2002 Interior Secretary’s Renewable Energy on Public Lands initiative requested FWS to fast-track development siting guidelines to minimize impacts to wildlife and habitats.
- Guidance released to public in July 2003, open to 2 years of public comment – 25 comments provided for administrative record.
- Guidelines developed allow FWS Field Offices to help wind developers avoid future take of migratory birds and Federally-listed threatened and endangered species, as well as minimally impact wildlife habitats. Do this by:
 - proper evaluation potential sites.
 - proper location and design turbines, associated infrastructures.
 - pre- and post-construction research and monitoring to identify and assess risk and potential impacts to wildlife.

III. Use of the Service's Guidance

- Like real estate, location of wind facilities critical: “good”/wildlife friendly vs. “bad” sites.
- Ranking sites and assessing risk, pre-development:
 - FWS attempted in guidance develop process assess and rank sites through Potential Impact Index (PII) protocol – developed by wind industry rep, MT State official, academician, and FWS employee and field-tested >1 year.
 - PII protocol may be helpful tool or as future concept in CA.
- Spatial and temporal use of airspace, pre-development:
 - Need to know how birds, bats, and insects (food for birds/bats) use airspace – daytime, night, season-to-season, year-to-year, and inclement weather.
 - Useful tools: remote sensing radars, acoustic, infrared, night vision, mist netting, traditional sampling by visual, radio telemetry, etc.
 - Need adequate sampling to account yearly and seasonal variability bird, bat, insect, and other wildlife activity.
- Post-construction monitoring:
 - Important to perform b/c validates (or negates) hypotheses, conclusions, and recommendations made during risk assessment and pre-construction monitoring processes.
 - Can also provide scientific data allowing “mid-course corrections” to fix documented problems discovered during monitoring through subsequent use of deterrents, mitigation, or alternate actions.

IV. Voluntary Guidance vs. Statutory Regulations

- Guidance voluntary, not unlike our communication tower guidance, and electric utility Avian Protection Plan guidance.
- MBTA strict-liability statute where proof of intent to violate any provision Act not required. Congress intended make killing even 1 bird illegal. Act allows prosecution killing 1 bird and FWS does not issue “incidental” or “accidental take” permits (*unlike those issued under ESA*).
- While certainly not first priority, enforcement may sometimes be necessary. *E.g.*, Moon Lake Electric Cooperative Assoc. criminally prosecuted by DOJ for electrocuting 16 raptors at power lines not made bird-friendly. Penalties can be extensive.
- To date, no wind company or consultant been prosecuted for take under MBTA.
- To address legal issues, Director's May 2003 cover memo introducing guidance made it clear that guidelines not intended to limit or preclude Service from exercising its authority under any law, statute, or regulation.
- Service's Law Enforcement agents recognized in cover memo that while no provision under MBTA allows for unauthorized take, FWS recognizes that

some birds may be killed at wind turbines even if all reasonable measures to avoid take are implemented.

- Office Law Enforcement carries out its mission to protect migratory birds not only through investigation and enforcement, but by fostering partnerships with industry to proactively seek to eliminate wind's impacts on migratory birds. OLE and DOJ will use their enforcement and prosecutorial discretion in working w/ this industry, especially with those companies which have made good faith efforts to avoid take of migratory birds.

V. Next Steps for Guidance

- January 2006 reps. from FWS, AWEA, Clean Energy States Alliance, National Audubon Society, and AFWA met to begin discussion how best to reduce impacts wind power development on wildlife. Threat litigation under FACA resulted postponement February public meeting.
- Service currently working w/ DOI Solicitors, General Law, Office Dispute Resolution, and FWS Directorate to determine most appropriate course action to meet intent of discussion group, and spirit and intent of FACA and Administrative Procedures Act. Working to finalize recommendation on how to soon proceed.
- Interim guidance remains in place. We recommend its continued use until updated version made publicly available.

VI. Coordination and Collaboration

- Service wishes to continue helping CA develop wind siting guidance to minimize impacts to birds, bats, other trust resources, and their habitats.
- Where we can share our scientific expertise – either from Regional office, Field Offices, and Washington office – we'll do our best to help in whatever way is requested.
- Research VI meeting of National Wind Coordinating Committee being planned for November 14-16, 2006, San Antonio, TX. Would be good meeting to have reps. from CA (in addition to Linda Spiegel) to attend. Will be providing updates on latest scientific findings since October 2004 regarding birds, bats, and wind turbines.

Thank you for opportunity to provide brief comments on development of wind guidance in California.