

National Wildlife Federation Summary U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines

Background

In response to increasing wind energy development in the United States, the U.S. Fish and Wildlife Service (Service) in July 2003 released for public comment a set of voluntary, interim guidelines for reducing adverse effects to fish and wildlife resources from wind energy projects. After the Service reviewed the public comments, the Secretary of the Interior established formally in 2007 a Federal Advisory Committee (Committee)¹ to provide recommendations to revise the guidelines related to land-based wind energy facilities. The Committee submitted its final Recommended Guidelines to the Service in March 2010. The Service convened an internal working group to review the Committee's recommendations and develop voluntary draft "land-based" wind energy guidelines. This effort included extensive continued consultation with the Committee, and three revisions of draft guidelines available for public comment in 2011. The Final Land-Based Wind Energy Guidelines (Guidelines) were published on March 23, 2012.

General Overview

With proper diligence paid to siting, operations, and management of wind projects, it is possible to mitigate for adverse effects to fish, wildlife, and their habitats. This is best accomplished when a wind developer coordinates as early as possible with the Service and other stakeholders. The Service's Land-Based Wind Energy Guidelines are intended to facilitate that communication, and are founded upon a "tiered approach" for assessing potential adverse effects to fish and wildlife and their habitats. The tiered approach is an iterative decision making process for collecting information in increasing detail; quantifying the possible risks of proposed wind energy projects to fish, wildlife, and habitats; and evaluating those risks to make siting, construction, and operation decisions. Subsequent tiers refine and build upon issues raised and efforts undertaken in previous tiers. At each tier, a set of questions is provided to help the developer evaluate the potential risk associated with developing a project at the given location, along with a robust set of methods and metrics to follow when coming up with answers to those questions. The tiered approach guides a developer's decision process as to whether or not the selected location is appropriate for wind development. This decision is related to site-specific conditions regarding potential species and habitat effects, and the decision to move to the next tier is made with defined communication roles for both the Service and the developers.

Voluntary Adherence

The Service is urging voluntary adherence to the Guidelines and communication with the Service when planning and operating a facility. The Service will regard such voluntary adherence and communications as evidence of due care with respect to avoiding, minimizing, and mitigating adverse impacts to species protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, and the incentive for wind developers to voluntarily comply with the Guidelines is that the Service will take such adherence and communication fully into account when exercising its discretion with respect to any potential referral for prosecution related to the death of or injury to any such species.

Each developer will be responsible for maintaining internal records sufficient to demonstrate adherence to the draft Guidelines. Examples of these records could include: studies performed in the implementation of the tiered approach; an internal or external review or audit process; an Avian and Bat

¹ The list of FAC members, the FAC Charter, and additional information about the FAC is available online at http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee_information.html

Protection Plan; or a wildlife management plan. Service retains its existing authority to inspect and assess the sufficiency of those records.

The Guidelines include a 'Suggested Communications Protocol' with clear responsibilities and timelines for wind developers and the Service to follow at each tier. Proper consideration of the advice of the Service entails contemporaneous documentation of how the developer evaluated that advice and the reasons for any departures from it. Although the guidelines leave decisions up to the developer, the Service retains authority to evaluate whether developer efforts to avoid and mitigate impacts are sufficient, and to refer for prosecution any take of migratory birds that it believes to be reasonably related to lack of responsiveness to Service communications or insufficient compliance with the guidelines.

Tiered Approach to Decision Making

At each tier, decision-making is based upon level of risk to species and habitat, as determined by studies and communication with the Service. To guide the identification of risk, for each tier the Guidelines include a key set of relevant questions that should be answered, a set of scientifically-robust methods and metrics to use in developing answers to the questions and assessing potential impacts, protocol design issues and recommendations where appropriate, and ultimately a point of decision for moving to the next tier.

- Tier 1 – Preliminary evaluation or screening of potential sites (landscape-scale screening of possible project sites)
- Tier 2 – Site characterization (broad characterization of one or more potential project sites)
- Tier 3 – Pre-Construction monitoring and assessments (site-specific field assessments at the proposed project site – study duration dictated by risk)
- Tier 4 – Post-construction monitoring of effects (to evaluate fatalities and other effects – study duration dictated by risk)
- Tier 5 – Research and additional post-construction studies (to further evaluate direct and indirect effects, and assess how they may be addressed - habitat fragmentation and adaptive management)

Best Management Practices and Compensatory Mitigation Guidance:

The Guidelines list a set of practices at each stage of development to reduce potential impacts, which would be suggested by the Service during communication with a project developer, and will be updated regularly. Also, the Guidelines advise how to apply formal Service Mitigation Policy (prioritize avoidance and minimization, then compensation for habitat loss or permitted take), and also provide a set of on-site 'operational mitigation measures' and 'deterrent mitigation devices' that if validated further could be opportunities to reduce adverse effects.

Implementation

The Guidelines will be implemented upon final publication. The Service will make every effort to begin training staff, users, and other interested parties as soon as possible, with a goal of beginning training no later than six months after publication of the final Guidelines. The Service recognizes that hundreds of wind energy projects exist and are being planned and thus recommends that wind project developers apply the tiered approach at the appropriate tier based on the stage of development or construction of the project. All projects that commence after the effective date should apply the tiered approach to all phases of the project. However, projects that are already under development or are in operation are not expected to start over or return to the beginning of a specific tier. Instead, these projects should implement those portions of the guidelines relevant to the continuing phases of the project.