



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



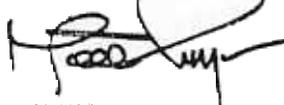
In Reply Refer To:
FWS/DHRC

MAY 12 2005

RD/DRD
RDT
cc: ALL RI PLS

Memorandum

To: Regional Director, Regions 1, 2, 3, 4, 5, 6, 7
Manager California/Nevada Operations Office
Acting

From: Director 

Subject: Fish and Wildlife Service Initial Coordination Letter Template for Wind Power Projects

In recent months, the Assistant Directors for Fisheries and Habitat Conservation and Migratory Birds, and the Chief of the Office of Law Enforcement, have been collaborating on wind power development to improve Fish and Wildlife Service communications and coordination with the wind power industry. There have also been discussions between the Service and the Department of the Interior's Energy Ombudsman, that indicate a need for improved communication on wind power issues as well as a need to conduct further coordination with the wind industry community concerning the Service's "Interim Guidance on Avoiding and Monitoring Impacts from Wind Turbines (Interim Guidelines).

The Assistant Directors are working with their staffs to plan and convene several Regional public workshops, primarily designed to foster better collaboration and understanding of the Service's objective for implementation of the Interim Guidelines. It will also provide another opportunity to get feedback from the industry on the guidelines. You will receive additional information concerning these Regional meetings as they are scheduled.

To create a positive opening dialogue between the Service and wind power project applicants, a template for a standardized wind power project initial coordination letter has been developed and is found in Attachment 1. Please provide this standardized language template to all Project Leaders and Field Supervisors in your Region and encourage its use as we continue to build a constructive, collaborative approach to meeting our mandates and conservation objectives for fish and wildlife resources at wind power development projects.

If you have any questions, or need additional information please contact Dr. Mamie Parker, Assistant Director - Fisheries and Habitat Conservation at (202) 208-6394, Paul Schmidt, Assistant Director - Migratory Birds at (202) 208-1050, or Kevin Adams, Chief, Law Enforcement at (202) 208-3809.

Attachment



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Attachment



SAMPLE LETTER

Mr. Project Manager
Whirlwind Energy Company
1111 Fairlane Way
Anytown, USA

Dear Mr. Project Manager:

Thank you for your letter dated.....concerning the proposal for thewind power generation project. These comments are being provided pursuant to the Endangered Species Act (ESA), Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Fish and Wildlife Act of 1956. This information is being provided to assist you in making an informed decision regarding site selection, project design, compliance with applicable laws, and to determine whether a permit to cover anticipated take of species is appropriate under the ESA.

The Fish and Wildlife Service (Service) supports the development of wind power as an alternative energy source, however, wind farms can have negative impacts on wildlife and their habitats if not sited and designed with potential wildlife and habitat impacts in mind. Selection of the best sites for turbine placement is enhanced by ruling out sites with known, high concentrations of birds and/or bats passing within the rotoswept area of the turbines or where the effects of habitat fragmentation will be detrimental. In support of wind power generation as a wildlife-friendly, renewable source of power, development sites with comparatively low bird, bat and other wildlife values, would be preferable and would have relatively lower impacts on wildlife.

Because of the potential for wind power projects to impact endangered bird, bat, or other listed species, they are subject to the Endangered Species Act (16 U.S.C. 1531-1544) section 9 provisions governing "take", similar to any other development project. Take incidental to a lawful activity may be authorized through the initiation of formal consultation, if a Federal agency, is involved; or if a Federal agency, Federal funding, or a Federal permit are not involved in the project, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA may be obtained upon completion of a satisfactory habitat conservation plan for the listed species. However, there is no mechanism for authorizing incidental take "after-the-fact."

The Migratory Bird Treaty Act (16 U.S.C. 703-712; MBTA) implements four treaties that provide for international protection of migratory birds. The MBTA prohibits taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. Bald and golden eagles are

afforded additional legal protection under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). Unlike the Endangered Species Act, neither the MBTA nor its implementing regulations at 50 CFR Part 21, provide for permitting of "incidental take" of migratory birds.

While the MBTA has no provision for allowing unauthorized take, the Service recognizes that some birds may be killed at structures such as wind turbines even if all reasonable measures to avoid it are implemented. While it is not possible under the MBTA to absolve individuals, companies, or agencies from liability if they follow these recommended guidelines, the Service's Office of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals, companies, or agencies who have made good faith efforts to avoid the take of migratory birds.

The Service's "voluntary" Interim Guidance on Avoiding and Minimizing Impacts from Wind Turbines may be helpful as you evaluate your proposed wind power generation site. (<http://www.fws.gov/r9dhcbfa/windenergy>). The guidance contains a pre-development site evaluation and ranking process to assess potential project impacts, as well as recommendations for conducting post-construction monitoring. The guidance also contains more information on the applicable laws and permitting aspects, in Appendices 3 and 5. Service staff welcome the opportunity to work with representatives of your industry.

Thank you for the opportunity to provide comments on thewind power generation project. Please contact, if we can be of further assistance as your project is designed and implemented.