



## **U.S. Fish and Wildlife Service Draft Land-Based Wind Energy Guidelines Poised to Impact the Wind Industry and Markets that Depend on the Wind Industry – Comments Due May 19, 2011**

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The U.S. Fish and Wildlife Service (USFWS) has issued “voluntary” Guidelines to be used for all utility-scale and community-scale land-based, wind energy projects regardless of whether they are proposed for private or public lands. The Guidelines outline an approach for evaluating and addressing impacts to fish, wildlife and their habitats as a result of land-based wind energy projects. The Guidelines have the potential to negatively impact the wind industry by providing for increased project timelines and additional operational uncertainty. Wind and related industry participants should review the draft Guidelines in terms of their own projects to determine whether to file comments by May 19, 2011.

Although voluntary, the Guidelines are intended to be used by developers, federal agencies, and state organizations for selecting sites for wind energy projects; and compliance will be considered evidence of due care with respect to avoiding, minimizing and mitigating adverse impacts to protected species. Adherence to the Guidelines will further be taken into account by the USFWS when exercising its discretion with respect to any potential referral for prosecution related to the death of or injury to any such species.

### **Wind Industry Assessment**

The Guidelines define a tiered process for collecting information in increasing detail in order to quantify and evaluate risks of proposed wind energy projects to fish, wildlife, and habitats to be used in making siting, construction, and operation decisions. The American Wind Energy Association (AWEA) has expressed concern that the Guidelines will negatively impact wind development. According to AWEA, among other problems with the guidance as released, it could:

- Delay construction of projects by up to three years, and require operating projects to retroactively conduct post-construction wildlife studies for a minimum of two and as much as five years, adding unforeseen costs to the operating budgets of these facilities.
- Require “adaptive management”, which could include operational changes, such as shutting off turbines at certain times of the year, which will add further unquantifiable costs to even projects already permitted and operating.
- Request analysis on wildlife-based sound impacts without any peer-reviewed scientific evidence that sound related to the construction and operation of wind farms has the potential to impact wildlife.
- Greatly expand applicability under the National Environmental Policy Act (NEPA) to projects built on private lands, adding time and costs to developing wind projects, when there is no federal staff to perform this vastly increased amount of administrative work.

AWEA has indicated that they will file comments by the May 19, 2011 deadline. AWEA’s statement can be found here:  
[http://www.americanwindenergyassociation.net/rn\\_release\\_02-15-11.cfm](http://www.americanwindenergyassociation.net/rn_release_02-15-11.cfm)

### **Impact to Markets Ancillary to Wind**

A negative impact to the wind industry could further impact other markets that depend on wind development, like the market for renewable energy credits (RECs). For example, the EPA Green Power Partnership (GPP) is a voluntary program implemented by the EPA to support increased use of green power. The GPP supports corporate participation based on the purchase of a threshold quantity of eligible power proportional to their annual electricity use. Among two other criteria, to be eligible, the power must be generated from wind, solar, geothermal, qualifying biomass, or low-impact hydropower. Large corporations like Staples and Starbucks, both of which are ranked in EPA’s national top 50, are using the GPP to help reduce the environmental impacts of electricity use and support the development of new renewable generation capacity nationwide. Regulations that impact wind development would likely impact the way that these corporations participate.

### **Summary of Draft Guidelines**

The Guidelines are based on recommendations of the Wind Turbine Guidelines Advisory Committee (the Committee); a Committee established in 2007 by the Secretary of the Interior to provide recommendations to replace the 2003 interim voluntary guidelines related to land-based wind energy facilities. The tiered approach is designed to guide the developer’s decision process as to

whether or not the selected location is appropriate for wind development and the information collected at each successive tier is designed to guide further analysis for additional tiers. Specifically, the tiers address:

- 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 assessments at the proposed project site)
- Tier 4: Post-construction monitoring of effects (to evaluate fatalities and other effects)
- Tier 5: Research (to further evaluate direct and indirect effects, and assess how they may be addressed).

The Guidelines define a number of factors to be considered to assess the potential effects to various species: Collision and Barotrauma; Barrier Effects; Habitat Loss and Degradation; Habitat Fragmentation; Noise; Displacement and Behavioral Changes; and Indirect Effects. With indirect effects, the USFWS is concerned with effects that can manifest themselves at a time later than the causing action. The Guidelines emphasize effects resulting in introduction of invasive plants, increased predator populations or facilitated predation, and alterations in the natural fire regime. Indirect effects can drive the requirement for evolving mitigation measures, introduce significantly greater uncertainty into the assessment process and extend the timeframe for assessment.

Consideration of indirect effects falls within the concept of adaptive management incorporated into the draft Guidelines for use in project assessment. Adaptive management is defined as “[a] decision process that permits flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood.” The net effect is that the assessment process becomes a continual process requiring periodic reviews and adjustments as well as mechanisms to consider for the implementation of additional mitigation measures as necessary after the project is developed. As noted by AWEA, incorporation of adaptive management will likely introduce greater project uncertainty and extended project assessment timeframes.

The USFWS urges voluntary adherence to the draft Guidelines and communication with the USFWS when planning and operating a facility. The USFWS will regard such voluntary adherence and communication as evidence of due care with respect to avoiding, minimizing, and mitigating adverse

impacts to protected species and 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.

### **Conclusion**

The Guidelines have the potential to negatively impact the wind industry by providing for increased project timelines and additional operational uncertainty. The impact will not likely be limited to the wind industry and will reach related industries. Without adequate wind development, utilities will struggle to meet state mandated RPS requirements; and less wind coming on-line equates to fewer RECs for REC trading markets. Accordingly, stakeholders related to the wind industry may want to consider filing comments to the proposed Guidelines prior to the May 19, 2011 deadline.

For more information, please contact [Kelly de la Torre](#).

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