

FY 2009 RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM GRANTEES—Continued

Grantee	State	Amount awarded
Ohkay Owingeh Housing Authority .....	NM	300,000.00
Community Area Resource Enterprise .....	NM	300,000.00
Mescalero Apache Housing Authority .....	NM	300,000.00
Muscogee (Creek) Nation .....	OK	300,000.00
Iowa Tribe of Oklahoma .....	OK	296,496.00
Citizen Potawatomi Community Development Organization .....	OK	300,000.00
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians .....	OR	190,000.00
Allendale County Alive, Inc .....	SC	300,000.00
Catawba Indian Nation .....	SC	273,608.75
The Lakota Fund, Inc .....	SD	300,000.00
Mazaska Owecaso Otipi Financial, Inc .....	SD	160,000.00
Sicangu Wicoti Awayankapi Corporation .....	SD	300,000.00
First Nations Oweesta Corporation .....	SD	1,000,000.00
Buffalo Valley, Inc .....	TN	300,000.00
West Tennessee Legal Service, Inc .....	TN	300,000.00
Douglas-Cherokee Economic Authority, Inc .....	TN	214,038.00
Neighborhood Housing Services of Dimmit County, Inc .....	TX	300,000.00
Motivation Education & Training, Inc .....	TX	300,000.00
Upper Rio Grande Workforce Development Board .....	TX	300,000.00
Proyecto Azteca, Inc .....	TX	300,000.00
Makah Tribe .....	WA	300,000.00
Lummi Indian Nation .....	WA	279,304.00
Spokane Tribe of Indians .....	WA	300,000.00
Quinault Indian Nation .....	WA	300,000.00
Neighborhood Housing Services of Richland Center .....	WI	300,000.00
Lau Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin .....	WI	300,000.00
Southern Appalachian Labor School .....	WV	300,000.00
		25,030,464.75

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R9-FHC-2011-N013; 94300-1122-0000-Z2]

RIN 1018-AX45

**Fisheries and Habitat Conservation and Migratory Birds Programs; Draft Land-Based Wind Energy Guidelines**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability for public comment of draft Wind Energy Guidelines (Guidelines). These draft Guidelines are intended to supersede the Service's 2003 voluntary, interim guidelines for land-based wind development. Additionally, they are intended to respond to accelerated development of land-based, wind energy generation projects in the United States. These draft voluntary Guidelines provide developers and agency staff with an iterative process to make the best possible decisions in selecting sites to avoid and minimize negative effects

to fish, wildlife and their habitats resulting from construction, operation and maintenance of land-based, wind energy facilities.

**DATES:** These voluntary draft Guidelines are effective February 18, 2011. We must receive any comments by the end of the day on May 19, 2011.

**ADDRESSES:** The draft Guidelines may be downloaded from <http://www.fws.gov/windenergy>. To request a copy of the draft Guidelines by U.S. Mail, write: U.S. Fish and Wildlife Service, 4401 North Fairfax Drive; Room 840, Arlington, VA 22203. You may also send an e-mail request to: [windenergy@fws.gov](mailto:windenergy@fws.gov). Please specify whether you want to receive a hard copy by U.S. mail or and electronic copy by e-mail. To submit your comments, see "Request for Public Comments" under **SUPPLEMENTARY INFORMATION**.

You may submit e-mail comments to [windenergy@fws.gov](mailto:windenergy@fws.gov). Please include "Wind Energy Guidelines Comments" in the subject line of the message, and your full name and return address in the body of your message. Please note that the e-mail address will be closed when the public comment period closes. Alternatively, you may submit comments or recommendations by mail to: Attention: Wind Energy Guidelines; Division of Fisheries and Habitat

Conservation; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Mail Stop 4107; Arlington, VA 22203-1610.

**FOR FURTHER INFORMATION CONTACT:** Christy Johnson-Hughes, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358-1922. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:** The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. As part of this, we are charged with implementing statutes including the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. These statutes prohibit taking of Federally listed species, migratory birds and eagles unless otherwise authorized.

Increased energy demands and the nationwide goal to increase energy production from renewable sources have intensified the development of energy facilities, including wind energy. The Service supports renewable energy development that is compatible with fish and wildlife conservation.

These draft Guidelines provide recommendations that are intended to:

- (1) Promote compliance with relevant wildlife laws and statutes;

- (2) Encourage scientifically rigorous survey, monitoring, assessment, and research designs proportionate to the risk to affected species;

- (3) Produce potentially comparable data across the Nation;

- (4) Avoid, minimize, and/or compensate for potential adverse effects on fish, wildlife and their habitats; and,

- (5) Improve the ability to predict and resolve effects locally, regionally, and nationally.

The Service encourages project proponents to use the process described in these draft *voluntary* Land-based Wind Energy Guidelines (draft Guidelines) to address risks to fish and wildlife resources. The Service anticipates that these draft Guidelines, when used in concert with the appropriate regulatory tools and other existing policies, will provide the best practical approach for conservation of species of Federal trust responsibility. The Service will initiate a peer review of the draft Guidelines during the public comment period.

### Background

In July 2003, the Service released for public comment a set of voluntary, interim guidelines for land-based, wind energy projects to assist developers in avoiding, minimizing and/or compensating for effects to fish, wildlife, and their habitats related to land-based, wind energy facilities. Following a 2-year public comment period, and receipt of 25 public comments for the record, in March 2007, the Secretary of the Interior (Secretary) established the Wind Turbine Guidelines Advisory Committee (Committee) under the Federal Advisory Committee Act (5 U.S.C. Appx 2). The Committee submitted final recommendations to the Secretary on March 4, 2010. The Service appreciates all the time and effort that members of the Committee devoted to developing their recommendations. The Service convened an internal working group representing several Service programs to review the Committee Recommendations and used the Recommendations as a basis to develop the Service's draft wind energy Guidelines.

The draft voluntary Guidelines describe the information needed to identify, assess, mitigate, and monitor the potential adverse effects of wind energy projects on fish, wildlife, plants and their habitats, using a consistent and predictable approach, while

providing flexibility to accommodate the unique circumstances of each project. The framework within the draft Guidelines is intended to standardize methods and metrics, resulting in greater consistency of information, and aid in understanding future effects of these projects. The framework also helps developers understand how to avoid or minimize effects to certain species, which is important for compliance with a number of laws, including: the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–711), the Bald and Golden Eagle Protection Act (BGEPA or Eagle Act; 16 U.S.C. 668–668d), and the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*).

The levels of surveying, monitoring, assessing, and collecting other information will vary among different wind-energy projects due to the diverse geographic, climatological, and ecological features of potential wind development sites. Founded upon a “tiered approach” for assessing potential effects to fish, wildlife, and their habitats, the guidelines are intended to promote: Compliance with relevant laws and statutes; the use of scientifically rigorous survey, monitoring, assessment and research designs proportionate to the potential risk to affected species; the accumulation of comparable data across the landscape; the identification of trends and patterns of effects; and, ultimately the improved ability to predict and resolve effects locally, regionally and nationally.

These draft Guidelines are not intended nor shall they be construed to limit or preclude the Service from exercising its authority under any law, statute, or regulation; to limit or preclude the Service from taking enforcement action against any individual, company, or agency; or to relieve any individual, company, or agency of its obligations to comply with any applicable Federal, State, Tribal, or local laws, statutes, or regulations. The methods described in the draft Guidelines are intended to provide information for assessment of effects, as well as information to guide the creation of avoidance, minimization, and compensatory measures. Developers that use and follow the draft Guidelines also demonstrate a good-faith effort to develop and operate projects consistent with the intent of local, Tribal, State, and Federal laws. The Service will regard such voluntary adherence and communication as evidence of due care with respect to avoiding, minimizing, and mitigating significant adverse impacts to species protected under the MBTA and BGEPA.

### Comparison of Committee Recommendations With the Resulting Draft Guidelines

The responsibility of the Service is to protect and conserve fish, wildlife, and their habitat (fish and wildlife). With the development of these draft Guidelines, the Service is providing a clear and readily usable path for the protection and conservation of fish and wildlife. Although voluntary, the Service hopes developers will utilize the final Guidelines to reduce the impacts wind energy facilities can have on fish and wildlife, while enabling the Nation to increase its renewable energy portfolio. The Guidelines encourage the wind industry to coordinate early and often with the Service to avoid, minimize, and/or compensate for potential adverse effects on fish, wildlife and their habitats.

As the Service developed these draft Guidelines based on the Committee Recommendations it modified, accentuated, and reduced some sections. The Department has co-equal responsibilities to promote sustainable renewable energy development and conserve wildlife. In the draft Guidelines, the Service addresses issues of utmost importance to meet our conservation goals and conform to statutes, regulations, and policies. The following is an overview of some of the differences between the Recommendations and the draft Guidelines.

*Study Duration and Intensity:* The Committee Recommendations did not mention specific study duration. The draft Guidelines recommend 3 years for pre-construction studies and 2 years minimum for post-construction studies because these timelines should be of sufficient duration and intensity to ensure adequate data are collected to accurately characterize wildlife use of the area.

*Decision Process:* The Committee Recommendations noted that the developer makes key decisions. The draft Guidelines recommend that the developer coordinate early and often with the Service when making decisions about when and whether to proceed to the next tier to gain joint understanding of data analysis and project planning.

*Implementation:* The Committee recommended that the Service delay implementation of the Guidelines for 24 months to account for projects that are in planning or under construction and to have an opportunity for Service and wind industry personnel to learn about them. The draft Guidelines accommodate projects that are in various stages of development, from

early planning to operational. The Service has committed to developing and providing training to practitioners on the final Guidelines to assure uniform interpretation.

**Adverse Effect:** The Committee Recommendations use a threshold of “significant adverse effect” for those impacts that need to be studied or addressed. The draft Guidelines removed “significant” from the phrase. Because the Service intends to use the term in a manner similar to that described in the Committee Recommendations, the inclusion of the word “significant” would be redundant.

**Use of Project Descriptors and Other Terms:** The Committee Recommendations used the terms “area of interest,” “project area,” “project site,” “species of concern, and species of fragmentation concern.” The draft Guidelines modified the terms to be consistent with Service practices and policies. The terms are now “area of influence, project site, extent of direct effects, extent of indirect effects, affected species, and species sensitive to habitat fragmentation.”

**Adaptive Management:** The Committee Recommendations used Adaptive Management concepts from a variety of sources. The Service uses the Department of the Interior Adaptive Management Handbook.

**Noise:** The Committee Recommendations do not include a discussion of noise impacts to wildlife. The draft Guidelines include a discussion on noise and incorporates noise in the tier questions based on comments and recommendations received from other Federal agencies.

**Habitat Fragmentation:** The Committee Recommendations include an extensive discussion on the effects of habitat fragmentation on sage grouse and prairie chickens. The draft Guidelines expanded the discussion to include habitat loss and degradation and moved the sage-grouse-specific discussion to the Service Wind Energy Web site. Extensive species-specific references were moved to the Web site to focus on process.

**Tiers 4 and 5:** The Committee Recommendations separate post-construction fatality studies into Tier 4 and habitat studies into Tier 5. The draft Guidelines expanded Tier 4 to assure comprehensive fatality monitoring (Tier 4a) and monitoring other effects, including habitat (Tier 4b). We also included in Tier 5 research to address gaps in knowledge, evaluate the effectiveness of best management practices, address questions that exist across multiple projects, and as a

component of an adaptive management program.

**Mitigation:** The Committee Recommendations included a brief discussion of general mitigation considerations. The draft Guidelines include an expanded discussion on mitigation under the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act because mitigation may be an important component of site planning for many projects.

**Conflict Resolution:** The Committee Recommendations identified a specific individual in the Headquarters Office to respond to conflicts. The draft Guidelines modified this to the standard chain of command for the Service because Service policies call for resolving issues at the lowest appropriate level.

**Legal White Paper:** The Committee Recommendations included a Legal White Paper that discussed statutes, as well as various options such as “bird letters,” migratory bird permits, conservation banking and other ideas. The draft Guidelines include a discussion of the Service’s legal authorities and statutes.

#### Web Site

The Service has established a public Web site that will provide support to developers and stakeholders as they use the draft Guidelines. Information on the Web site will be reviewed periodically to ensure that it remains current and applicable. The Web site currently includes: the Committee Recommendations, the Service’s 2003 interim wind guidelines, and supporting documents for the draft Guidelines. Future additions to the Web site will include: recommendations on risk assessment tools, survey and monitoring protocols, research designs, applicable policies and regulations, best management practices, best available technologies, recommendations for reducing adverse effects; map-based risk-assessment products, information on buffers and noise effects, and other pertinent literature.

The Web site is still being developed, but the Service welcomes public review and comment of its progress: visit <http://www.fws.gov/windenergy> to review and comment. We also welcome comments on how to improve the applicability of this Web site.

#### Request for Public Comments

We request comments on the draft Guidelines. We are particularly seeking comments regarding the cost effectiveness of these draft Guidelines for all wind turbines, including community scale operations. All

comments we receive by the date specified above in **DATES** will be considered during preparation of the final guidelines. We prefer to receive comments via e-mail, but you may alternately submit your comments by any one of the other methods mentioned above. If you submit your comment by e-mail, please include “Draft Land-Based Wind Energy Guidelines Comments” in the subject line of your message, and your full name and return U.S. mailing address in the body of your message. Please note that e-mail address [windenergy@fws.gov](mailto:windenergy@fws.gov) will be closed when the public comment period closes. We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information we received, may lead us to adopt final guidelines that differ from these draft Guidelines. Comments merely stating support of or opposition to the draft Guidelines without providing supporting data or rationale are not as helpful.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

As published elsewhere in today’s **Federal Register**, the Service is simultaneously soliciting comments on the draft Eagle Conservation Plan Guidance.

**Authority:** The authorities for this action are the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*); the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703–711); and the Bald and Golden Eagle Protection Act of 1940, as amended, (16 U.S.C. 668–668d).

Dated: January 31, 2011.

**Rowan Gould,**

*Director, U.S. Fish and Wildlife Service.*

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