



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



RECEIVED

JUL 29 2008

PUBLIC SERVICE COMMISSION

JUL 29 2008

Ms. Rebecca Longley
Tetra Tech EC, Inc.
133 Federal Street, 6th Floor
Boston, Massachusetts 02110

Dear Ms. Longley:

This is in response to your June 13, 2008, request for environmental information in relation to a proposed wind energy development project in Oliver County, North Dakota. No information is provided as to the number of wind turbines or other infrastructure. Therefore, our comments are general in nature. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), and the National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982).

The U.S. Fish and Wildlife Service (Service) holds certain resources in trust and manages them for the benefit of the American people. These resources include migratory birds, inter-jurisdictional fish, federally-listed threatened and endangered species of plants and animals and their habitats, and units of the National Wildlife Refuges system. When planning an activity, project proponents should give careful consideration to potential impacts to these trust resources and compliance with the laws mentioned above. Additional information is provided below.

Migratory Birds

Adequate consideration for avian resources early in the site evaluation process can help to minimize impacts and facilitate project review. Although current wind turbine technology and proper siting can help to minimize the incidence of avian deaths due to blade, aerial line, and tower strikes, the potential for direct mortality of some migratory birds will remain. Wind power developers, in concert with the Service, can help to ensure that projects proceed with as little impact to migratory birds as possible. This can be accomplished by gathering information on avian resources as they relate to project siting and by implementing measures to minimize impacts to migratory birds from the construction and operation of the wind facility. The

Service's Interim Wind Turbine Siting Guidelines are enclosed to assist in project planning (enclosure 1). We encourage the project developers to conduct a Potential Impact Index (PII) analysis to assist in the selection of a wind power site that minimizes the potential to impact migratory birds. Please inform this office whether or not you plan to use the Service's interim guidelines in selecting your site, and if not, why not, and whether you intend to use a different method to assess avian resources and impacts to migratory birds.

To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. The recommended guidelines can be found in "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends new power lines that cross or run adjacent to rivers or large wetlands be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the Edison Electric Institute, P.O. Box 266, Waldorf, Maryland 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org.

Threatened and Endangered Species

A list of federally threatened and endangered species that may occur within the proposed project's area of influence is enclosed (enclosure 2). This list fulfills requirements of the Fish and Wildlife Service under Section 7 of the Endangered Species Act.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the action "may affect" listed species or critical habitat. If the Federal agency or its designated agent determines the action "is likely to adversely affect" listed species or modify critical habitat, the responsible Federal agency shall request formal section 7 consultation with this office. If the evaluation shows a "no effect" determination on listed species or critical habitat, further consultation is not necessary. If a private entity receives Federal funding for a construction project, or if any Federal permit or license is required, the Federal agency may designate the fund recipient or permittee as its agent for purposes of informal section 7 consultation. The Service does not believe that a determination of "no effect" is appropriate for this wind resource area because of, but not limited to, the presence of migrating whooping cranes in this area.

Section 10(a)(1)(B) of the ESA allows non-Federal parties planning activities that have no Federal nexus, but which could result in the incidental taking of listed animals, to apply for an incidental take permit. (A Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency). The application must include a habitat conservation plan (HCP) laying out the proposed actions, determining the effects of those actions on affected federally-listed fish and wildlife species and their habitats (often including proposed or candidate species), and defining measures to minimize and mitigate adverse effects.

The Aransas Wood Buffalo Population (AWBP) of whooping cranes is the only self-sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Endangered whooping cranes have been documented using roosting habitat in the vicinity of the proposed wind resource area. The proposed wind resource area is located within a 90 mile wide migration corridor that includes 75% of all confirmed whooping crane sightings in North Dakota (enclosure 3). The presence of suitable roosting and feeding habitat for whooping cranes, and confirmed whooping crane sightings, document the potential for whooping crane presence in the proposed wind resource area. A wind energy project in this area has the potential to affect whooping cranes during their annual spring and fall migration through North Dakota. Potential effects may be direct (e.g. collision mortality) or indirect (e.g. avoidance of the site resulting in cranes seeking alternate habitat). The interactions of whooping cranes with wind turbines and wind farms are currently not fully known, although it is expected that these large birds with relatively low maneuverability are susceptible to mortality via collisions with turbines. Currently, collisions with power lines are the greatest known source of mortality for fledged whooping cranes during migration, and have accounted for the death or serious injury of at least 46 whooping cranes since 1956.

Fish and Wildlife Service Property Interests

The Service administers Waterfowl Production Area fee title as well as wetland and grassland easements throughout North Dakota. A review of Service realty records indicate no Service property interests are located in the planning area.

High Value Habitat Avoidance

The proposed project area is located in the Missouri Slope Upland region of North Dakota and includes areas of native mixed-grass prairie. Since the 1800s, North Dakota has lost approximately 75 percent of its native prairie grasslands, primarily due to crop production. The Service recommends avoiding construction or disturbance on native prairie areas.

Native prairie has significant natural resource values including:

1. Provides habitat for a number of migratory and resident grassland birds whose populations are declining.
2. Provides nesting habitat for millions of waterfowl.
3. Contains 200-300 plant species, which provide genetic diversity important to agriculture and medicine.

4. Provides habitat for thousands of insects including the Dakota skipper, a candidate species for listing under the ESA, and other butterflies (Ex: Regal fritillary, Tawny crescent).
5. Crucial for soil and water conservation.
6. Provides recreational opportunities (hunting, bird watching/wildlife observation, hiking).
7. Living laboratories for scientific research.

Our review of National Wetland Inventory (NWI) maps indicate that numerous wetlands and streams are located within the project area. The Service recommends that you avoid these areas if possible. NWI data can be accessed directly by visiting their website at (wetlands.fws.gov). Section 404 of the Clean Water Act regulates placement of fill materials in certain wetlands. A Corps of Engineers' 404 permit may be required if fill material will be placed in aquatic sites including wetlands. Contact Mr. Dan Cimarosti, Regulatory Office, Corps of Engineers, 1513 South 12th Street, Bismarck, North Dakota 58504 (701-255-0015), to determine their permit requirements. If a 404 permit is required, the Service will provide recommendations on this project to the Corps.

Other high value wildlife habitat types in North Dakota include wooded draws and riparian forests. We recommend that you avoid construction of wind towers and appurtenant facilities in the above habitat types whenever possible. Construction activities should be conducted in a manner that will minimize impacts to the wildlife and the existing habitat in the project area. To help avoid impacts, we recommend that you:

- Schedule construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of migratory birds or active nests, the Service recommends that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats to determine the absence or presence of nesting migratory birds. If nesting migratory birds are found, we request you contact this office, suspend construction, or take other measures, such as maintaining adequate buffers, to protect the birds until the young have fledged. The Service further recommends that field surveys for nesting birds, along with information regarding the qualification of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site, be thoroughly documented and that such documentation be shared with the Service and maintained on file by the project proponent at least until such time as construction on the proposed project has been completed.
- Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. Obtain seed stock from nurseries within 250 miles of the project area to insure the particular cultivars are well adapted to the local climate.

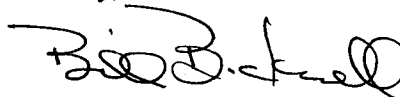
- Minimize grassland disturbance by using fewer, larger turbines and limiting new road construction.
- Use underground transmission lines between turbines, as well as to the primary substation.
- Locate appurtenant facilities to avoid placement of fill in wetlands along the route.
- Install and maintain appropriate erosion control measures to reduce sedimentation and water quality degradation of wetlands and streams near the project area.
- Replace unavoidable wetland losses with functionally equivalent wetlands.


Research, Monitoring, and Assessment

We encourage project proponents to conduct collision monitoring studies designed to determine the effect of several factors, such as site selection, turbine designs, the layout of wind plants, wind plant operations, habitat alteration, and changes in available perching and nesting sites, on bird deaths. The Avian Subcommittee of the National Wind Coordinating Committee (NWCC) has developed a guidance document to assist wind energy developers in designing studies that will produce credible and comparable results of avian interaction with wind power plants. The NWCC document, "Studying Wind Energy/Bird Interactions: A Guidance Document. Metrics and methods for determining or monitoring potential impacts on birds at existing and proposed wind energy sites," can be obtained by contacting the National Wind Coordination Committee, c/o RESOLVE, 1255 23rd Street, Suite 275, Washington, D.C. 20037, or by visiting their website at (www.nationalwind.org).

Given the Service requirements and recommendations above, as well as possible unforeseen issues that may arise, we encourage you to build sufficient planning time for coordination with the Service into your project timeline. Thank you for the opportunity to comment. If you require further information as project planning proceeds, please contact Terry Ellsworth of my staff, or contact me directly, at (701) 250-4481, or at the letterhead address.

Sincerely,



 Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures (3)

cc: Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: D. Cimarosti)
ND Public Service Commission, Bismarck
Director, ND Game & Fish Department, Bismarck
(Attn: M. McKenna)