



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/Region 5/ES

JUL 20 2004

Honorable Alan B. Mollohan
House of Representatives
Washington, DC 20515

Dear Mr. Mollohan:

Thank you for your letter of June 23, 2004, concerning domestic wind energy development on land in the Mid-Atlantic Highlands, including West Virginia. You specifically inquired about the subject matter jurisdiction of the U.S. Fish and Wildlife Service (Service) and asked several related questions. Our responses specifically refer to terrestrial wind energy.

With regard to jurisdiction, the Service has regulatory and advisory roles in assessing the impacts to fish and wildlife from wind energy projects. The Service has congressional mandates to protect certain wildlife under Federal laws, such as the Endangered Species Act, Migratory Bird Treaty Act, and the Bald and Gold Eagle Protection Act. These laws contain specific prohibitions or conditions, which, in certain instances, confer potential liability on the project developer if protected species are taken. We also are authorized, under other Federal laws, to provide comments and advice regarding project impacts on fish and wildlife habitat. This is particularly true under the Fish and Wildlife Coordination Act when a project requires a Federal permit from the Corps of Engineers and under section 404 of the Clean Water Act, or section 10 of the Rivers and Harbors Act.

As you are aware, wind energy projects are authorized on a State or local level. Unfortunately, the timeframes and requirements for review and approval are not consistent and vary widely from State to State and also within States where approval is at the local level. At this time, there is no Federal framework that requires proponents of land-based wind energy projects to formally consult with the Service during the project planning (including site evaluation and project design), construction, or operations, except when a section 404 permit is required.

We are often contacted by project proponents or their consultants for purposes of consulting. However, contacts are not consistent or predictable and often occur late in the planning process, after binding agreements have been made with landowners and power purchasers. These situations often leave the Service in the awkward position of informing people about the statutes

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authorizing our activities when projects may have little flexibility and funding with which to address Service concerns. This continues to impede our ability to fulfill our statutory responsibilities, serve the public, and protect wildlife and which allows limited predictability to licensing applicants.

You asked if the Service is studying the possible cumulative effects of the expanding domestic wind industry on migratory birds and other wildlife. In our letter to you dated July 13, 2004, we indicated that the Service is not currently conducting independent studies related to wind energy impacts on migratory birds or bats in the Northeast. Instead, we have been requesting information from project proponents on the temporal and spatial use by migratory birds and bats of commercial grade wind energy sites in the Northeast. However, the wind industry has been generally reluctant to conduct studies and provide such information. Without such pertinent information, and adequately trained field staff, project impacts on migratory birds and bats are difficult to adequately assess, and we are not able to perform our regulatory and advisory roles in licensing domestic wind energy projects on land in the Northeast.

We are very concerned about the potential cumulative effects of the expanding domestic wind industry in the Northeast on migratory birds and bats. We are particularly concerned about the large number of bats that were killed late last summer at the Mountaineer Wind Energy Facility in West Virginia. This occurred during a different season and under different circumstances than the bird kill you inquired about in your May 20, 2004, letter. We remain concerned as to whether or not this was a one-time event or could reoccur. We are similarly concerned about the paucity of relevant wildlife information available for impact assessment prior to site selection, project authorization, and construction. Unfortunately, we know more about where migratory birds and bats summer and winter than how they migrate over the landscape between seasons. We are collaborating with the U.S. Geological Survey (USGS), utilizing their Science Support Program, and working jointly with two USGS Principal Investigators to submit proposals by the end of July to gain additional information. Although these efforts will assist data gathering, they represent a small portion of the effort needed for a cumulative assessment and site-specific assessments which may be needed.

We are also actively engaging the science community and industry in this effort. Staff from this Region will attend the annual meeting of the Society for Conservation Biology at the beginning of August to engage researchers in this issue. Our employees also participated in the May 2004 Wind Energy and Birds/Bats Workshop in Washington, DC. Service employees organized the Bats and Wind Power Generation Technical Workshop held in Florida last February. A copy of the proceedings has been provided to your office.


We recognize that these outreach efforts neither provide a comprehensive nor a timely solution. However, these efforts indicate that the Service is seeking to raise the visibility of the broad issues and improve the public's understanding of them.

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Again, we would be pleased to meet with you or your staff to further discuss these issues. Feel free to contact Dr. James G. Geiger, Acting Assistant Regional Director – Ecological Services, at 413-253-8304.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moriarty', is written over a horizontal line. To the right of the signature, the word 'ACTING' is printed in a bold, sans-serif font, tilted upwards.

Marvin E. Moriarty
Regional Director