

Wind Turbine Guidelines Advisory Committee Subcommittee Report April 21, 2008

Subcommittee Name: Legal Subcommittee

Membership: Mike Daulton
 Jeri Lawrence
 Steve Quarles
 Patrick Traylor

Status of Subcommittee Work:

The Subcommittee has met twice.

The first meeting was a telephonic conference on March 14, 2008. During that call, the Subcommittee agreed on its mission. The mission is twofold. First, the Subcommittee decided that it could best serve the FAC by providing advice on methods to implement the Committee's ultimate recommendations. All Subcommittee members assumed that, if the Committee arrived at consensus recommendations, it would be in all FAC members' interest to also recommend a process that would motivate all public, tribal and private stakeholders to implement the recommendations. The Subcommittee decided that it would attempt to provide an array of optional processes under federal wildlife law (e.g., Endangered Species Act (ESA), Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act) that could be employed to provide incentives to all states and tribes to adopt, and all project proponents to follow, the FAC recommendations. Subcommittee members were concerned that the choices for application of federal law may be viewed in too stark black and white terms – fully regulatory or entirely hortative – and that the commonly understood list of available procedures under federal law was too narrow – only mandatory ESA section 7 consultations on any federal agency actions associated with projects (such as Clean Water Act 404 permits) or voluntary submittal of habitat conservation plans by project proponents and issuance of federal incidental take permits under ESA section 10. The Subcommittee decided to seek a meeting with the Interior Department's Solicitor's Office to secure its assistance in drafting a document that lays out the full array of possible implementation processes, both existing and potential, under federal wildlife law, emphasizing voluntary processes.

The Subcommittee felt the second part of its mission was more general – to be a sounding board and information source for legal issues as they arise in the FAC's or other subcommittees' deliberations, to the extent the FAC or subcommittees choose to seek the Subcommittee's assistance (or to the extent the Subcommittee feels compelled to comment...as lawyers are wont to do).

The second meeting was on Friday, April 18, 2008 with Assistant Secretary for Fish and Wildlife and Parks Karsh Aha and Ben Jessup from the Solicitor's Office. The conclusion reached at this meeting was that Ben would identify several members of the Solicitor's office and perhaps elsewhere in Main Interior who are expert in various aspects of federal wildlife law, and the Subcommittee would then meet with them to discuss the format and substance of a draft processes document. The Subcommittee expects the document to have both text and a matrix, describing and exhibiting procedures and characteristics (including standards, incentives, etc.) for each process. The Subcommittee intends to edit this document prior to submission to the FAC at its third meeting.

Materials for review: None at this time.

Next Steps: Described above under Status of Committee Work.