

U.S. Fish and Wildlife Service
Wind Turbine Guidelines Advisory Committee
Legal Subcommittee
Conference Call, October 1, 2008

Meeting Summary

Participants:

Mike Daulton
Steve Quarles
Mark Sinclair
Patrick Traylor

Susan Goodwin
Cheryl Amrani
Ed Lewis (FWS)
Jason Rylander

Kevin Garlick (FWS)
Donald Carr
Rob Manes
Gerald Hawkins

- The White Paper is meant to be a *brief* layperson's overview on how each of the statutes involved in the FAC's recommendations work. The Clean Water Act is discussed *as it relates to NEPA*. The goal is to ascertain that the FAC recommendations are consistent with the statutory provisions put forth in the charter, and how liability may be imposed under those statutes (i.e. how developers might run into trouble under those statutes).

- **Next Steps:** Send all comments to ekimbrell@kearnswest.com by close of business, **Thursday, October 9th**. See the table below for the changes that will be made in each section and by whom.
 - ❖ Phone call between Elana, Susan, Steve, and Patrick on October 13 or 14 (Look for an email from ekimbrell@kearnswest.com to schedule this)

 - ❖ Elana will compile and redistribute White Paper to the Legal Subcommittee and the Solicitor's Office on October 14

 - ❖ Subcommittee and Solicitor review the White Paper by Oct 20 in preparation for a subcommittee meeting at 9am on October 21 at the FWS Headquarters in Arlington, VA

 - ❖ Please send the following changes to ekimbrell@kearnswest.com by close of business **Thursday, October 9**. If you see any problems with this table, please let us know.

		<u>Section Two</u>
<u>Location in section</u>	<u>Changes</u>	<u>Responsible Party</u>
All brackets	Fill in text	Steve Quarles
II	Revise to accurately reflect Charter's charge to Committee	Rob Manes
II (A): ESA	Talk to Paul Schmidt about definition of "harass" and how it applies to habitat modification. Draft language on this, and on changes to April meeting summary if it is incorrect.	FWS Law Enforcement
II (A): ESA	Critical habitat and consultation; incidental take under ESA	Steve Quarles
II (B): MBTA	Incidental take permits under MBTA, with cases and law review articles cited as background. Language on no private right of action under MBTA, but explaining how the APA has been used.	Gerry Hawkins; Patrick Traylor will re-circulate important articles to subcommittee
II (B): MBTA	Dollar figures for penalties, with the caveats that were discussed (always too low)	FWS Law Enforcement
II (B): MBTA	Take language on MOUs from April 23 mtg summary, and ask FWS Migratory Birds for examples of MOUs to share with Legal subcommittee	Susan Goodwin
II (C): Bald and Golden Eagle Protection Act	Definition of "disturb"	FWS Law Enforcement
II (C): Bald and Golden Eagle Protection Act	Need text on new regulations, including proposed programmatic permits, and explanation that BGEPA doesn't have incidental take provision	FWS Law Enforcement (ask Clint Riley?)
II (C): Bald and Golden Eagle Protection Act	Paragraph on NEPA's characteristics as a non-substantive statute with no enforcement provisions; how CWA triggers NEPA	Steve Quarles (ask Jason Miller to review?)
II (C): Bald and Golden Eagle Protection Act	Ask other federal agencies how NEPA is used for wind power projects on federal lands; grandfather HCPs. Ask Jason Miller to review NEPA paragraph.	FWS (Susan, Cheryl, Rachel)
II (E): Needs title	Native American land	Susan Goodwin (done, see draft)

		Section Three
Location in section	Changes	Responsible Party
Title	Change? "Avoidance of take, minimization of impacts, and mitigation"	
III (A) 2: Section 6 State Cooperative Agreements	Need text	Gerry Hawkins and Susan Goodwin; send to Steve to review?
III (A) 2: Section 6 State Cooperative Agreements	Use Idaho Snake River cooperative agreement as an example?	FWS check with Solicitor's Office
III (A) 3: Conservation Agreements	Need text; include sentence on easements	Steve Quarles
III (A) 6: Candidate Conservation Agreements	Strike sentence on assurances. CCAs only entered into with assurances. Leave footnote 46.	Steve Quarles
III (A) 7: General Conservation Plans	Add a few sentences taken from Dale Hall's memo; send memo itself to subcommittee	Susan Goodwin
III (A) 9: 4(d) Rules	Revise and make corrections	Steve Quarles
III (B) 1: Bird letters	Revise language/make edits; change name, perhaps "FWS letters regarding enforcement policy"	Steve Quarles; edits by FWS and Solicitor's Office
III (B) 2: Special Purpose Permits in MBTA	Need text	Mike Daulton and Mark Sinclair
III (C): 2: Bald eagle regulatory approaches	Need text on new regulations	FWS (Clint Riley; Law Enforcement)
References	Send in your important citations to add to a reference section at end	All