

U.S. Fish and Wildlife Service
Wind Power Guidelines Advisory Committee
Legal Subcommittee
Meeting and Conference Call, July 2, 2008

Draft Summary

Participants:

Steven Quarles
Mike Daulton
Susan Goodwin
Jeff Underwood

Patrick Traylor
Cheryl Amrani
Jim Eisen

Don Carr
Rachel London
Rob Manes

- The group welcomed Don Carr to the Subcommittee discussion.

ACTION: Susan Goodwin will seek concurrence from the group via e-mail to invite Don Carr as a technical expert to the Subcommittee.

- Those present at the meeting and on the phone discussed the scope of the Options Paper. The group agreed that the Options Paper will be a catalogue of existing federal statutory, regulatory, and judicial tools; will characterize carrots and sticks; will focus on actionable items; and will recognize existing gaps. The catalogue will include programmatic approaches that are currently in use. Potential phases of future development of the Options Paper may include developing recommendations on the existing tools; creating a matrix; and identifying bridges to state and tribal law and regulation.

ACTION: Patrick Traylor will work with his staff and with Mike Daulton to complete and circulate amongst the Subcommittee a draft Options Paper within the next 3 – 5 weeks.

- Under the Endangered Species Act, the Subcommittee identified the following existing federal statutory, regulatory, judicial tools, and programmatic approaches:
 - ✓ State cooperative agreements
 - ✓ HCPs
 - ✓ Incidental take permits - Sec. 10(a)(1)(B)
 - ✓ Conservation agreements (e.g. Swan Valley, Plum Creek)
 - ✓ Bird letters (examples from Regions 1 & 2)
 - ✓ Safe Harbor agreements – Sec. 10(a)(1)(A)
 - ✓ Candidate conservation agreements – Sec. 10(a)(1)(A)
 - ✓ GCPs (General Conservation Plans)
 - ✓ Conservation banking
 - ✓ Section 7 consultation
 - ✓ Special 4D rules for threatened species (FWS’s umbrella rule)
 - ✓ No surprises

- Under the Migratory Bird Treat Act, the following existing approaches were identified:
 - ✓ Bird letters
 - ✓ “Comfort” letters
 - ✓ Special purpose permits (in DOI regulations for limited situations)
- Under the Bald and Golden Eagle Protection Act, the following existing approaches were identified:
 - ✓ Rulemaking
 - ✓ “Comfort” letters
 - ✓ Likelihood of disturbed nests

- The group briefly discussed the existing “carrots” for industry. The major “carrots” fall under the connected categories of “legal” and “financial,” with immunity from citizen suits being the tastiest carrot. It was discussed that although proponents are unlikely to be sued and successfully stopped, financial institutions, Boards of Directors and Officers want absolute insurance. It was also mentioned that industry wants to see “mowing down of potential sticks,” meaning that there be a new carrot available for every new stick introduced.

- The group decided it will present an outline of the draft Options Paper to the FAC at the July 23-24, meeting.

ACTION: Patrick will develop a proposed outline of the draft Options Paper accompanied by brief explanation of the Subcommittee’s progress to be presented to the FAC at the July 23-24 meeting.

The Subcommittee will not meet or hold a conference call until after the July 23-24, 2008, FAC meeting.