



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region
Division of Migratory Bird Management



Date: 16 September 2010

MIGRATORY BIRD PERMIT POLICY, REGION 6

SUBJECT: Policy on the process used for issuing permits for collection/possession of dead birds associated with wind energy facilities in the U.S. Fish and Wildlife Service's (Service) Mountain-Prairie Region (MT, WY, CO, UT, ND, SD, KS, NE).

PURPOSE: The purpose of this document is to provide guidance for Service staff in the Mountain-Prairie Region when working with wind-development entities and their contractors who plan to monitor mortality of birds at their facilities and to explore management actions designed to reduce such mortality.

AUTHORITY: The authorities for this guidance are the Migratory Bird Treaty Act (16 U.S.C. 703-712) and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), and implementing regulations at 50 CFR § 10 (General Provisions), § 13 (General Permit Procedures) and 50 CFR § 21.23, 21.27, and 22.21.

BACKGROUND: The Service cannot authorize the take of any migratory bird that is incidental to an otherwise lawful activity. Historically, migratory bird salvage permits have been issued primarily to individuals to collect and possess dead birds for use in museums, visitor centers, and other venues for public conservation education. Issuance of a permit was contingent on the collector not having any part in the mortality of the birds, and typically permits were issued only to individuals such as scientists, educators, and museum curators.

In contrast, birds found dead near wind turbines often may have been killed by striking rotating blades or the stationary portion of the turbines. In many cases, the wind energy facility likely contributed to or caused the mortality of birds, mortality that may have been avoided or minimized if appropriate siting and take-minimization measures were employed. Thus, issuance of a salvage permit as was practiced historically is not appropriate for mortalities at wind energy facilities. However, the Service also recognizes that the collection of information related to bird mortality at such facilities will assist both the Service and wind energy companies to refine best management practices to avoid and minimize the take of migratory birds. Permits to collect dead or injured birds will be available to wind energy companies, when they meet the criteria specified in this policy, to acquire information relative to migratory bird mortality at wind energy facilities. No individual is allowed to collect or move any dead migratory bird without a

Service-issued permit authorizing such activity. The Mountain-Prairie Region will use the three-tiered process identified below to guide issuance of migratory bird permits to collect such information.

POLICY:

Tier 1. If a wind energy company or its contractors want to simply monitor mortalities at and around its facilities (e.g., tally the number and species of birds found dead on its properties), a permit will not be issued to collect the dead birds provided that there are no human health or safety issues that may exist as a result of dead birds remaining in place. The Service believes that dead birds can be counted and identified, and if so desired marked with global positioning system coordinates or similar methods (e.g., flags) without physically moving or removing the carcasses. Due to the importance of eagles to Native American Tribes and their need for eagles, developers should immediately report any dead eagle to the nearest Service Office of Law Enforcement (OLE) Agent so that the eagle can be retrieved for submission to the National Eagle Repository. No employee of the company, their contractors, or private individuals may touch, move, remove, or otherwise disturb any eagle without prior consent of a Service OLE Agent.

Tier 2. If a wind energy company or its contractors want to collect more extensive information regarding bird mortalities at its facilities, such as the effects of predator removal of carcasses and their impacts on estimation of mortality, or the effects of different management practices designed to reduce the take of birds (e.g., blade striping, timing of turbine operation), the Service will, contingent on the application being in compliance with all relevant regulations and subject to a biological review, issue a time-limited scientific collecting permit to allow the movement, collection and storage of bird carcasses. Issuance of such a permit will require submission of a research proposal identifying objectives of the study, methods, statistical analyses to be performed, and expected benefits of the research. It will also require that the study be scientifically valid, contain information that is needed to promote conservation of birds, and that the information and results will be reported to the Service when requested.

Tier 3. If a wind energy company develops an Avian Protection Plan (APP) or Avian and Bat Protection Plan (ABPP) for their operations that is acceptable to the Service, finalization of such a plan would enable the company to enter any mortality data associated with their wind energy facility into the Service's Law Enforcement bird mortality database. Because development of an APP/ABPP expresses a commitment by the company to take all steps practicable to avoid and minimize the take of migratory birds, and because all detected bird mortalities would be entered into the database, the Service will issue a Special Purpose permit to allow collection, manipulation, and/or removal of bird carcasses at and around the wind energy facility.

Even though permits will be issued in some instances as described above, such permits would not authorize the take of birds. However, the permits would facilitate the collection of needed data that would provide reliable information useful for the refinement of best management practices for wind energy facilities in the future.

While the MBTA currently has no provision for allowing unauthorized take, the Service realizes that some birds may be killed during project construction and operation even if all known

reasonable and effective measures to protect birds are used. The Service's Office of Law Enforcement carries out its mission to protect migratory birds not only by investigations and enforcement, but also by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the OLE focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take.

This permit guidance is restricted and governed by the Code of Federal Regulations, Title 50, Parts 10, 13, 21, and 22, and any interpretation of any statement in this document is superseded by the intent of those regulations. The guidance does not pertain to issuance of permits required for other types of take of migratory birds.

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