Applicant: James Young, Issaquah, WA; PRT–68172A

Applicant: James McNicol, Chandler, AZ; PRT–66555A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N244; 94300–1122–0000–Z2]

RIN 1018–AX45

Fisheries and Habitat Conservation and Migratory Birds Programs; Final Land-Based Wind Energy Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final voluntary Land-Based Wind Energy Guidelines (Guidelines). These Guidelines supersede the Service's 2003 voluntary interim guidelines for land-based wind energy development. They respond to accelerated development of land-based wind energy generation projects in the United States. These voluntary Guidelines provide developers and agency staff with an iterative process to make sound decisions in selecting sites to avoid, minimize and compensate for adverse effects to wildlife, particularly birds and bats, and their habitats resulting from construction, operation, and maintenance of land-based wind energy facilities.

DATES: These voluntary Guidelines are effective March 26, 2012.

ADDRESSES: The Guidelines may be downloaded from *http://www.fws.gov/windenergy*. To request a copy of the draft Guidelines by U.S. Mail, write: U.S. Fish and Wildlife Service, 4401 North Fairfax Drive; Room 840, Arlington, VA 22203. You may also send an email request to: *windenergy@fws.gov.* Please specify whether you want to receive a hard copy by U.S. mail or an electronic copy by email.

FOR FURTHER INFORMATION CONTACT: Christy Johnson-Hughes, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1922. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. As part of this mission, we implement statutes including the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–711), and the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668–668d). These statutes prohibit taking of federally listed species, migratory birds, and eagles unless otherwise authorized.

Increased energy demands and the nationwide goal to increase energy production from renewable sources have intensified the development of renewable energy facilities, including wind energy. The Service supports renewable energy development that is compatible with wildlife conservation.

The voluntary Guidelines will provide Service staff, developers, landowners and other stakeholders with a tool to assist in avoiding, minimizing, and compensating for significant adverse impacts to wildlife and their habitats. Adherence to the Guidelines is voluntary and does not relieve any individual, company, or agency of the responsibility to comply with laws and regulations. However, if a violation of law occurs, the Service will consider a developer's documented efforts to communicate with the Service and adhere to the Guidelines. The Guidelines include a Communications Protocol that provides guidance to both developers and Service personnel regarding expectations of appropriate communication and documentation.

The Service anticipates that these Guidelines, when used in concert with appropriate regulatory tools and other existing policies, provide the best practical approach for wildlife conservation.

Background

In July 2003, the Service released voluntary interim guidelines for land-based wind energy projects to assist developers in avoiding, minimizing, and/or compensating for effects to wildlife and their habitats related to land-based wind energy facilities. In 2007, the Secretary of the Interior (Secretary) established the Wind Turbine Guidelines Advisory Committee (Committee) under the Federal Advisory Committee Act (5 U.S.C. App.). The Committee submitted final recommendations to the Secretary on March 4, 2010. The Service appreciates all the time and effort that members of the Committee devoted to developing their recommendations, as well as since that time, as the Service developed these final Guidelines. The Service used the recommendations as a basis to develop the Service's draft Guidelines, which we circulated for comment in February 2011 (76 FR 9590, February 18, 2011).

We announced several opportunities for the public to attend Committee meetings and to submit comments or otherwise participate in the development of the Guidelines as follows:

Federal Register citation	Date of publication	Purpose of notice
76 FR 18238	April 1, 2011	Announced Committee meeting of April 27, 2011.
76 FR 20006	April 11, 2011	Announced availability of teleconference line for April 27, 2011, Committee meeting.
76 FR 38677	July 1, 2011	Announced Committee meeting of July 20–21, 2011.
76 FR 48174	August 8, 2011	Announced Committee meeting of August 23, 2011.
76 FR 54481	September 1, 2011	Announced Committee meeting of September 20–21, 2011.

The Service received more than 30,000 comments (summarized below) on the draft Guidelines from a wide range of interests, including Federal, State, and local agencies; tribes; wind energy developers; utilities; national and local wildlife conservation organizations; universities; and concerned citizens. The Service made

subsequent revisions of draft Guidelines available on July 13, 2011, and September 13, 2011, for additional public comment. Following circulation of both revised drafts, we reconvened the Committee to obtain input from Committee members as well as the public attending the Committee meetings (July 20–21 and September 20–21, 2011). Approximately an additional 1,000 comments were received on the revised drafts.

The final Guidelines incorporate elements from the Committee's recommendations, the draft Guidelines, as well as extensive public comment received during comment periods and the public Committee meetings. The majority of the comments focused on either the need to make the Guidelines mandatory or to keep them strictly voluntary. The following is a succinct summary of comments received and our responses.

Comment: The Service received a large number of comments stating that the Guidelines should be made mandatory. We also received a large number of comments supporting voluntary Guidelines.

Response: The Service believes that voluntary initiatives to avoid and minimize impacts to species of concern can be effective. The wind industry has clearly expressed its willingness to take seriously the need to site and operate projects in a responsible manner. Furthermore, under existing authorities, the Service cannot mandate compliance with the Guidelines as currently written. Mandatory application would require a significant narrowing of the scope of the Guidelines. As currently written, the Guidelines contemplate a process in which developers consider proposed wind energy projects in the context of the entire landscape, focusing on species and habitats that may be significantly impacted by their proposed project. The Guidelines anticipate that developers will include in their review species beyond the scope of Service jurisdiction, such as prairie chickens and non-ESA-listed bat species, which can be negatively affected by wind energy development. The Guidelines also contemplate that developers will include in their review impacts to rare habitats that are currently unprotected but that are important to conserve. The Service believes that the comprehensive approach described by the Guidelines in combination with use of existing tools such as Habitat Conservation Plans, Bird and Bat Conservation Strategies, and Eagle Conservation Plans will provide robust conservation of wildlife and their habitats. If appropriate, based on experience gained under these Guidelines, the Service can revisit their voluntary nature in the future.

Comment: The Guidelines should clarify consultation requirements and Service decision-making.

Response: The final Guidelines clarify that wind energy developers may decide to move from one tier to the next, but that this decision should be made in two-way communication with Service field offices. The final Guidelines commit the Service to providing feedback to wind project developers within 60 days of receiving such communications, and to respond in writing to developers before or during Tier 3 of a project (prior to initiating construction) with any concerns or recommendations.

Comment: The Service received many comments supporting a phase-in period of 6 months to 2 years for currently operating projects and those under development. Other comments supported immediate use of the final Guidelines.

Response: The Service has decided not to ''phase-in'' the implementation of the Guidelines, but rather to employ them immediately with publication of this notice. To address concerns about the lack of a phase-in period, the final Guidelines clarify that: (a) All projects that commence after the effective date should apply them; (b) developers are not expected to go back to earlier tiers for projects in development or operation; and (c) operating projects should adhere to Tiers 4 and 5 as appropriate. The Service believes that because the Guidelines are voluntary, there is no need to delay implementation beyond publication. Many developers and the Service are currently discussing numerous wind energy projects and how to reduce the impacts of those projects on species of concern.

Comment: The Guidelines should include species-specific science information rather than have the information provided elsewhere, such as on the Service's Web site.

Response: While the draft version of the Guidelines did place species-specific information on the Service's Web site, this process was cumbersome for reviewers and inefficient for practitioners. Therefore, we moved the recommended methods and metrics to be used for bird and bat species back into the Guidelines in the Chapters focused on pre- and post-construction studies.

Comment: The Guidelines should discuss the appropriateness of the various methods and metrics available, rather than list them.

Response: The Service agreed with commenters that providing context and discussion of the methods and metrics within the Guidelines is helpful to the reader. The final Guidelines provide discussion of the various methods and metrics available for pre- and post-construction studies, as had been recommended by the Committee.

Comment: The Guidelines should be peer reviewed, and the Committee recommendations should also be peer reviewed.

Response: The draft Guidelines were peer reviewed by the Wildlife Society. We have posted the peer review on the FWS Wind Energy Web site. The Committee recommendations were not separately peer reviewed. The Service determined that it is not necessary to conduct a peer review on the recommendations prepared by the Committee because the final Guidelines have evolved since the recommendations were provided to the Secretary in 2010.

Comment: The Guidelines should differentiate between emerging issues and established science. Commenters felt that while there may be valid concern over certain issues such as the effects of wind turbine noise on wildlife, these issues have not been widely studied and are not yet understood well enough to be addressed by individual wind energy developers.

Response: Tiers 3 and 4 (pre- and post-construction studies and monitoring) point to topics typically considered when determining what to study, including: Collision, habitat loss and degradation, displacement and behavioral changes, and indirect effects. The Guidelines include collision and habitat loss as topics for wind project developers to assess and monitor in the tiered approach. Others, such as the effects of sound, are mentioned in Tier 5 in the context of research. These are topics that the Service would not expect a developer to assess except in rare circumstances. However, the tiered approach does not preclude them from consideration during preconstruction studies if they are determined to be a viable concern.

Comment: Several comments pertained to how the Service should incorporate new science as it becomes available. We received suggestions to create an advisory panel that meets annually; open any new information to public comment; and ensure that the addition of any new information conforms to the principles outlined in the Committee's recommendations.

Response: The final Guidelines do not establish an advisory panel to incorporate new information. A process

for recommending which new studies or methods/metrics developers should use is not identified in the Guidelines. The Service will consider the best way to incorporate new science as it becomes available.

Comment: The Guidelines should adopt a risk-based approach to study duration as opposed to requiring a minimum of 3 years of preconstruction studies.

Response: The Service received many differing opinions on the appropriate duration of preconstruction studies in Tier 3. While some felt that a minimum of 3 years is prohibitive, others felt that it was not long enough. The final Guidelines remove the default of 3 years of preconstruction monitoring and instead recommend that studies be of sufficient duration and intensity to ensure that adequate data are collected to characterize wildlife use of the proposed project area as determined in communication with the Service. This approach allows for data collection commensurate with the level of risk, as opposed to an across-the-board standard that does not take into consideration the circumstances at individual sites.

Comment: The scope of the Guidelines should be ''species of concern'' as originally used by the Committee in their recommendations, as opposed to ''fish, wildlife and their habitats.''

Response: After reviewing the definition of ''species of concern,'' the Service agrees that this term is most appropriate as it narrows the focus of developer's studies to species that may potentially be significantly impacted by a wind energy project. The final Guidelines use the term ''species of concern'' for scope of species covered.

Comment: The Guidelines should not apply to distributed and community-scale wind energy projects. The costs associated with adhering to the Guidelines are prohibitive for smaller scale projects and will stall or prevent the development of small-scale wind energy.

Response: The Service recognizes that studies have not shown small-scale wind energy projects to have significant adverse impacts to wildlife. However, the Service also recognizes that a poorly sited project, no matter the size, has the potential to cause significant impacts. For this reason, distributed and community-scale projects are not ''exempted'' from the Guidelines. The Guidelines are voluntary. No wind energy developer is bound to follow them. The final Guidelines clarify that, in most cases, small-scale wind energy projects will not have significant adverse impacts, but developers should still do a Tier 1 and/or Tier 2 analysis using publicly available information (e.g., internet searches) to ensure that the risk for potential impacts is low.

The final Guidelines preserve many elements from the previous drafts including descriptions of the information needed to identify, assess, mitigate, and monitor the potential adverse effects of wind energy projects on wildlife and their habitats; and flexibility to accommodate the unique circumstances of each project. The framework helps developers understand how to avoid or minimize effects to certain species, which is important for compliance with a number of laws, including MBTA, BGEPA, and ESA.

The levels of surveying, monitoring, assessing, and collecting other information will vary among different wind-energy projects due to the diverse geographic, climatological, and ecological features of potential wind development sites. Founded upon a ''tiered approach'' for assessing potential effects to species of concern and their habitats, the guidelines are intended to promote: Compliance with relevant laws and statutes; the use of scientifically rigorous survey, monitoring, assessment, and research designs proportionate to the potential risk to affected species; the accumulation of comparable data across the landscape; the identification of trends and patterns of effects; and, ultimately, the improved ability to predict and resolve effects locally, regionally, and nationally.

Authority: The authorities for this action are the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*); the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703–711); and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d).

Dated: March 20, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–7011 Filed 3–23–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N032; FXES11130400000C2]

Recovery Plan for the Endangered Spigelia gentianoides (Gentian Pinkroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final recovery plan for *Spigelia gentianoides* (Gentian pinkroot), a threatened species restricted to six locations within three counties in the Florida Panhandle and two counties in Alabama. The recovery plan includes specific recovery objectives and criteria to be met in order to reclassify this species from endangered to threatened status under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: You may obtain a copy of the recovery plan by contacting the Panama City Field Office (PCFO), by U.S. mail at U.S. Fish and Wildlife Service, 1601 Balboa Ave, Panama City, FL 32405, or by telephone at (850) 769–0552. Alternatively, you may visit the Fish and Wildlife Service's recovery plan Web site at *http://www.fws.gov/endangered/species/recovery-plans.html* or the PCFO Web site at *http://www.fws.gov/panamacity/listedplants.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Vivian Negrón-Ortiz, at the above address, or by telephone at (850) 769–0552, ext. 231.

SUPPLEMENTARY INFORMATION:

Background

We listed *Spigelia gentianoides* (Gentian pinkroot) as an endangered species under the Act (16 U.S.C. 1531 *et seq.*) on November 26, 1990 (55 FR 49046). *Spigelia gentianoides* is a small herbaceous plant and has two varieties: Var. *gentianoides* is restricted to five locations within three counties in the Florida Panhandle and southern Alabama, and var. *alabamensis* is limited to Bibb County, Alabama. The loss or alteration of habitat is thought to be the primary reason for the species' decline. The extant plants of var. *gentianoides* are located in fire-dependent longleaf pine-wiregrass and pine-oak-hickory ecosystems. Much of this habitat has been reduced in its range, converted to pine plantation, and managed without fire. Variety *alabamensis* is a narrow endemic, restricted to the Bibb County Glades (open, almost treeless areas within woodlands). Some of the glades are owned and protected by The Nature Conservancy. However, this variety is threatened by potential development of privately owned glades.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans