Meeting Notes
New England Wind Energy Impact Meeting
November 30, 2004
USFWS Field Office
Concord, New Hampshire

This Memo summarizes the major points raised during the meeting with USFWS – Northeast Field Office (NEFO) to discuss the issue of wind development and potential impacts on birds and bats.

Attending:

Mike Bartlett; Vern Lang; Susi von Oettingen; Alex Hoar; Dave Rothstein – USFWS
Mark Sinclair – CLF
Deborah Donovan – Union of Concerned Scientists
Roger Clark – Clean Energy States Alliance
Lew Milford – Clean Energy Group
Peter Felsenthal – Maine Interfaith Power & Light
Rob Pratt; Kristen Burke – Massachusetts Technology Collaborative
Jon Hinck – NRCM
Bob Klein; John Roe – The Nature Conservancy
Erich Stephens – People's Power & Light
Taber Allison – MA Audubon Society
Steve Katone – College of the Atlantic
Laurie Jodziewics – AWEA
Ken Kimball – AMC
Peter Arnold – Chewonki Foundation
Bill Hopwood – Hopwood, Inc.

Major Discussion Points

Mark Sinclair commenced the meeting emphasizing that there are large areas of agreement related to the issue of wind and avian impacts. All parties support wind energy development as an alternative to fossil fuel generation, recognize that energy choices all have implications for birds and wildlife, and are committed to minimizing impacts to wildlife from wind siting. Most parties agree that surveys should be conducted before projects are approved, consisting of on-site observations and more detailed evaluations of species of concern. Parties agree that lighting should be minimized and red solid state lights should be avoided. Most parties agree that some post-development mortality studies are warranted.

There, however, are large areas of confusion and disagreement, including:

- How many years of preconstruction study are warranted, if any, and based on what survey factors?
- What constitutes an adequate, pre-construction assessment?

- Is the New England Field Office applying the USFWS Interim Guidance in a more rigorous or different way than other offices?
- What distinctions should be made for projects of different scale and size, such as community wind projects?
- How good is population as an indicator of risk?
- What tools are available to estimate cumulative impacts on avian mortality from addition of wind development?
- What criteria should be applied to determine level of risk and significance of loss?
- Is there a role and/or authority for permitting under the MBTA strict liability statute?
- Is there a role for mitigation?
- What broad-based research is needed to evaluate the impacts on avian species from wind development in the Northeast? Who should pay for and conduct this research?

Alex Hoar of the USFWS then gave an overview of the process and authorities of the Service regarding the avian/bat issues. According to Alex, the Service recommends the wind developers complete a three-phase consultation process *before* making any binding land or power purchase agreements: (1) scoping of wildlife issues; (2) conduct studies with technical assistance from the Service in design; and (3) Service reviews studies and makes recommendations to resolve issues. The Service is proposing this process based on the consultation model used for FERC licensing of major hydropower projects. Alex stated that this process should not delay the development process if started early during project planning.

Alex Hoar and Mike Bartlett both emphasized that they want to work with wind developers cooperatively upfront to ensure that bad sites are not selected, that the Service must review wind projects on a case-by-case basis, and that the Northeast Field Office lacks the staffing to deal with all the wind projects in planning stages.

The Service also stated that they are very concerned about the cumulative effects on avian species if substantial wind development occurs in the region.

There were various comments in response to Alex's presentation and Mike's comments. Among the major themes:

- The issue of the potential impact of wind turbines on bird and bat species is one of the most contentious issues facing wind development and is affecting the timing, amount, and financial viability of wind development.

- It is not clear to the wind development community what assurances it receives under the MBTA if it complies with the 3 stage consultation process – due to the strict liability hammer existing even if the process is complied with and a kill still occurs. There is no permit or waiver of liability if the Guidance is followed.

- The cost of this data collection is also very high, especially for small wind projects.

- The number of kills at existing facilities are not significant and do not warrant this level of consultation, especially in light of the number of avian deaths resulting from other activities.

- It does not make sense to be concerned about the cumulative impacts on avian species from wind power, in light of the much greater impact from other activities.

- The Service is not applying this process to other energy generation sources, placing an unfair hurdle for wind development.

- It is not established that the presence of birds and bats in the same geographic location as a proposed turbine necessarily creates higher risk.

- Other offices of the USFWS are not applying the Interim Guidance as rigorously or strictly as the Northeast Office.

- MBTA strict liability is affecting financial viability of wind projects.

- The USFWS is inconsistent in its threatened enforcement of the MBTA against wind projects as compared to other activities and this is creating great uncertainty for wind developers.

Many parties commented that USFWS is not recognizing the wildlife/environmental benefits of wind development. USFWS Hoar and Rothstein both emphasized that the MBTA and Endangered Species Act simply do not allow the Service to consider the environmental benefits of wind in carrying out their responsibilities under the Act (although the National Environmental Policy Act assessment, if required, does allow for wind benefits to be recognized).

It was suggested that the Service consider an adaptive management approach to the issue – the concept of allowing a developer perform pre-construction inventory, perform post-construction monitoring, and make operational changes depending on avian mortality results. Under this approach, research/inventory/predictive modeling would occur before construction, coupled with monitoring after construction. Then modifications would made to the specific project and to future siting guidelines based on what is learned from the monitoring results. The USFWS is uncomfortable with the concept of adaptive management as applied to wind/avian issues.

MTC's Rob Pratt proposed that MTC is willing to do a demonstration project to further this concept, and would agree to take down any offending turbines. USFWS was not prepared to react to this proposal.

It was suggested by Alex Hoar that what is needed is mapping of the key migratory routes and sensitive habitats for certain avian and bat species. However, developing migratory route maps would require significant primary research on migratory routes of certain species. This would represent a substantial and time-consuming investment.

John Roe of the Nature Conservancy stated that the Service is acting correctly in being conservative and less flexible in applying its regulatory authorities, as there is very little data or knowledge about the impacts of wind facilities on New England's avian and bat species. We need to learn more about the level of risk at sites that have different habitat, species, and wind speeds.

Michael Bartlett stated that his Office is applying its study recommendations under the Guidance consistently to all size and location of projects in New England, despite acknowledging that this creates more of a hardship to small community projects.

David Rothstein provided an overview of the legal authorities under which the Service is acting, addressing the ESA, MBTA, and NEPA. Major points:

- The MBTA provides no mechanism to allow USFWS to authorize a taking. However, rule-making to allow for incidental taking under the MBTA is possible, although it could take a long time to pursue, could open the door for incidental taking for other activities, and would be difficult to administer.

- MBTA and ESA do not allow for consideration of benefits of wind power.

- Wind development approvals by local and state agencies can trigger ESA liability to those entities; even to agencies funding the wind projects.

- Wind developers are encouraged to meet early with USFWS to discuss study needs, and resolve USFWS issues before the state regulatory review process begins – since the State may lack expertise to review projects subject to federal laws.

Bill Hopwood, who has extensive past experience with the wind industry, expressed several points: (a) the wind industry is very willing to work cooperatively with USFWS unlike other industries of concern; (b) the wind industry, however, wants to be treated fairly relative to how the Service is treating other generation technologies and other activities that can harm avian and bat species; (c) the information on the substantial bat kills from West Virginia is a significant problem and more needs to be known about the causes; (d) regarding the Service's concern for cumulative impacts from wind, estimates of potential development of wind power is the United States is highly overstated; (e) it is not useful for the USFWS to address this problem by prescreening wind sites or predicting wind siting locations; and (f) there needs to be more opportunity for environmental organization and wind industry input into the Service's guidance document.

Many of the parties expressed a strong interest in working with USFWS in a collaborative process to address the questions above. This would allow parties to have a forum that not in the context of a permitting conflict to raise questions and discuss approaches.

The Service expressed concerns that NEFO staffing is inadequate to effectively respond to the wind development/avian issues it is facing in the region.

Areas for Further Discussion:

There were several areas identified that warrant future discussion between the Service and stakeholders, including:

- Is there a justification and/or need for different or less burdensome review for small wind projects?

- Is use of mitigation and delegation of USFWS regulatory oversight to state agencies appropriate, as is occurring in the State of Washington under the Washington Department of Fish & Wildlife's wind siting guidance?

- Are there alternative regulatory mechanisms to implementing the MBTA, such as permitting and safe harbor provisions?

- What are the regional research needs and how can these be funded?

- Can data be developed to identify high risk areas?

- Does it make sense to try to identify good sites through a planning approach rather than address issues by reacting to specific developer facility proposals?

- How can more education and communication occur between developers, USFWS, and state regulators.

Some Key Recommendations and Action Items (*these were individual suggestions and do not represent a consensus):*

1. Further collaborative discussions should occur between state regulators and wildlife officials, the NEFO of USFWS, wind developers, MTC and environmental ngos to proactively address the questions identified above.

2. It would be useful to identify ways to assist the Service's NEFO with staffing needs so that it can devote the necessary time to proactively address the wind/avian impact issue.

3. Analysis and comparison of how other regions of the USFWS are applying the guidance and addressing project review is needed to ensure a consistent approach.

4. UWFWS should consider employing the adaptive management approach, possibly using the small MTC wind projects as pilot projects.

5. USFWS should consider issuing regulations or permits under the MBTA to authorize unavoidable avian killings based on best siting practices and use of reasonable mitigating measures

6. Regional mapping of bird concentration areas would be useful