



FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES	
16 USC 1539(a)(1)(B) REGULATIONS (Attached)	
50 CFR §§ 13,17 & 21	
3. NUMBER	
TE104073-0	
4. RENEWABLE	5. MAY COPY
<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> NO
6. EFFECTIVE	7. EXPIRES
9/12/2006	9/30/2046

1. PERMITTEE

WINDMAR RENEWABLE ENERGY, INC.
CALLE GRANADA 2429
PUNTA LAS MARIAS
SAN JUAN, PUERTO RICO 00913

TELEPHONE: 787/977-5650

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
VICTOR L. GONZALEZ, PRESIDENT

9. TYPE OF PERMIT
THREATENED AND ENDANGERED SPECIES
- INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
LOCATED ON PUNTA VERRACO, CERRO TORO AND PUNTA VENTANA, MUNICIPALITY OF GUAYANILLA,
PUERTO RICO.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONTAINS CONDITIONS A - N (9 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.M AND 11.N OF THIS PERMIT.

ISSUED BY	TITLE	DATE
	DEPUTY REGIONAL DIRECTOR, FWS, SOUTHEAST REGION	9/18/06

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- E. The Permittee owns a 290-hectare (725-acre) property located in Guayanilla, Puerto Rico as described in Block 10. The Permittee will construct and operate twenty-five 1.65 MW wind turbines for a commercial wind-energy project (Project).

The Project site harbors occupied nesting, feeding, and sheltering habitat for the Puerto Rican nightjar (*Caprimulgus noctitherus*) on three forested hilly areas known as Punta Verraco, Cerro Toro, and Punta Ventana. Twelve nightjar territories would be temporarily affected by 12.2 hectares (30.5 acres) of construction-related habitat clearing. Of these impacts, 1.7 hectares (4.2 acres) would remain permanently cleared for the duration of the Project. Nightjars predominantly feed and move below the forest canopy and have not been reported flying at heights where they would be at risk of being struck by a rotor.

The Project site is located within the flight path of brown pelicans (*Pelecanus occidentalis occidentalis*) that forage in Guayanilla Bay and surrounding waters. These pelicans may fly into a turbine and be struck by a rotor.

Historically documented nesting habitat for the roseate tern (*Sterna dougallii dougallii*) occurs on the island Cayo Guayanilla, 600 meters (1,968.5 feet) south of Punta Verraco. Roseate terns are not known to nest at this site currently, but any terns that may nest on Cayo Guayanilla in the future would also be at risk of flying into a turbine and being struck by a rotor.

The Puerto Rican nightjar, brown pelican and roseate tern occurring on the Project site comprise the "covered species." Subject to the continuing validity of this Permit, the Permittee and its designated agents, successors, and assigns are authorized to take, in the form of harassment, harm, or mortality the covered species incidental to the activities as described in the Permittee's HCP, and as conditioned herein. This Permit does not authorize take of any covered species resulting from unlawful activities.

- F. The Permittee, upon reasonable notice, shall permit the contact office of the U.S. Fish and Wildlife Service personnel identified in Condition 11.M, below, or other properly permitted and qualified persons designated by the U.S. Fish and Wildlife Service, to enter the Project area boundaries at reasonable hours and times for the general purposes specified in Title 50 Code of Federal Regulation §13.21 (e)(2).
- G. The Permittee shall employ the following measures to ensure that take of the covered species is minimized and mitigated. The Permittee is responsible for meeting the terms and conditions of this Permit and implementing the HCP.

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G. (Continued).

Where a conflict occurs between the HCP and this Permit, the Permit shall control.

1. Clear vegetation outside of the nightjar nesting season. The Permittee shall clear vegetation outside of nightjar nesting season (February 24 to August 5). Exceptions may occur, however, where a minimal area of vegetation may need to be removed during nightjar nesting season. Acceptable exceptions would include situations such as a particular curve proving too tight for turbine deliveries, repairing storm damage, or making unexpected structural repairs to address operational or human safety concerns. In these events, the Permittee shall use experienced and qualified biologists to search for nightjar nests prior to habitat removal. In the event a nest is found, the Permittee shall avoid it by relocating the road or construction area, or by delaying the activity until the nightjar fledges its young. Any additional, exceptional habitat clearing shall be reported to the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M, below within five working days.
2. Use existing roads. The Permittee shall use 8.7 km (5.4 miles) of existing roads on the Project site for the installation of the twenty-five 1.65 MW turbines. The Permittee may construct a maximum of 1.4 km (0.87 mile) of new roads along the alignments shown in the HCP.
3. Number of turbines. The Permittee may install a maximum of twenty-five turbines. The maximum construction area to be affected for the placement of turbines shall not exceed 2,000 square meters (21,528.5 square feet) per turbine for a total of 5 hectares or 12.5 acres.
4. Clear vegetation in a way that allows it to recover. The Permittee shall scrape the vegetation at the surface, leaving the rootstalks intact, when clearing the new roads and turbine construction areas to allow dry forest vegetation to recover.
5. Paint rotor blades. At least 90 (ninety) days before the first turbine is installed, the Permittee shall present to the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M, below for review and approval a proposed pattern for painting rotor blades. The proposed pattern shall be the most effective in preventing bird strikes at turbine rotors as shown by the best available information at least 90 days before the first turbine is installed.

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6. Establish a predator control program. The Permittee shall institute a permanent program to trap mongoose, rats, and feral animals on the site to decrease predation pressure on the nightjars, the dry forest lizard (*Anolis cooki*), and other native animals. The control program shall be designed and implemented in accordance with guidelines established by local regulatory agencies (e.g., DNER, Department and Agriculture, among others). The control program shall be instituted at least 30 days after vegetation removal starts.
7. Establish roads as fire brakes. The Permittee shall maintain access roads to the wind turbines as fire brakes to decrease the threat of fire to the nightjar and its habitat.
8. Implement Avian Power Line Interaction Committee (APLIC) guidelines. The Permittee shall implement APLIC guidelines. The Permittee shall bury all electrical transmission lines on the site out to highway PR-335, where they then will run aboveground along existing transmission line poles to the Puerto Rico Electric Power Authority (PREPA) substation. The Permittee shall fit aerial transmission lines with flight diverters in any situation where there may be an electrocution or collision risk for large birds. The Permittee shall insulate lines at the poles and shall space lines to ensure that phase-to-phase and phase-to-ground contact cannot be made by birds, such as turkey vultures (*Cathartes aura*).
9. Establish a conservation easement. The Permittee shall establish a conservation easement into perpetuity on 245 hectares (612.5 acres) of the Project site within 120 days of the date when the Project begins to deliver electricity. The easement will be written in accordance with Puerto Rico Conservation Law, Law Number 183, approved on December 27, 2001, by the Legislature of the Commonwealth of Puerto Rico and shall be held by a qualifying non-profit organization.
10. Restore previous Texaco quarry area. The Permittee shall, within 120 days of the date the Project begins to deliver electricity, restore at least 2.6 hectares (6.5 acres) of the abandoned Texaco quarry at the base of Punta Verraco with dry forest vegetation. Ninety days prior to commencing initial habitat clearing for the Project, the Permittee shall submit a re-forestation plan to the Service for review and approval. The plan shall comply with all necessary local regulations.

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11. Restore mangrove area by improving drainage. The Permittee shall restore the 10-hectare (25-acre) mangrove area previously impacted by the construction of the causeway to Punta Verraco and subsequent silting in of its culverts. At least 120 days prior to the Project's first delivery of electricity, the Permittee shall submit a detailed plan to the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M, below for review and approval. The ultimate goal is to reestablish tidal flushing of the ecosystem, plant black mangrove (*Avicennia nitida*) seedlings to speed restoration, and improve foraging resources for the endangered brown pelican and threatened roseate tern. The Permittee shall obtain all necessary Federal and State permits to conduct the mangrove restoration. Mitigation shall be completed within a year after the date when the Project begins to deliver electricity.
12. Support brown pelican research. The Permittee shall establish a brown pelican research program within one year of the Project's first power generation. The Permittee shall consult with the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M, below to identify suitable research efforts, implementation schedules, and researchers to receive a \$100,000 grant. All research efforts and researchers shall obtain research permits from the PRDNER.
13. Establish an environmental education program. The Permittee shall establish and implement an environmental education program, emphasizing marine environments and the covered species and their habitats. Components of the program shall include the development of a brochure to be handed out in schools, community centers, and hotels and construction of an informational kiosk with environmental education in the facilities at the Ventana beach area. The program shall be established and implemented within the first 5 years of power generation.
14. The Permittee shall use qualified and experienced personnel to conduct nightjar call counts during breeding seasons during the period of Project construction and for the first five years after construction, and then once every five years.
15. The Permittee shall conduct a flight-use study for pelicans using airspace within the turbine fields post-construction to compare with pre-construction studies, as described in Appendix 13 of the HCP. This post-

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construction survey must use the same methodology that was used for the pre-construction study.

16. The Permittee shall conduct the Bird Mortality Assessment study as described in Appendix 13 of the HCP during the first three years of power generation. Ninety days after the first three years of data collection, the Permittee shall submit the final plan for continuing the monitoring of incidental take of pelicans and roseate terns. Results of the mortality assessment study will be evaluated and discussed with the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M, below to determine the methodology and frequency of the final monitoring plan.

H. Unforeseen and/or changed circumstances may become apparent either to the Permittee, authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the HCP developers and the U.S. Fish and Wildlife Service at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the covered species. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by HCP developers and the U.S. Fish and Wildlife Service, and that can be planned for.

The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts, circumstances could arise which were not fully anticipated by this Permit and which are considered unforeseen. Such circumstances may become apparent either to the Permittee or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as any significant, unanticipated adverse change in the status of species; any significant, unanticipated adverse change in impacts of the Activity or in other factors upon which the HCP and Permit are based; or any other significant new information relevant to the Permit and Activity that was unforeseen by the Permittee and the U.S. Fish and Wildlife Service that could give rise to the need to review the Permittee's conservation program. The U.S. Fish and Wildlife Service would consider the discovery of nightjars taken by a rotor strike to be a significant, unanticipated adverse change in the impacts of this Project.

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If, during the implementation of the HCP and adherence to this Permit, a significant unanticipated situation occurs that would have a serious effect on species covered by this Permit or on the ability of the Permittee to continue the effective implementation of the HCP and/or adherence to this Permit, the Permittee shall undertake actions described in Chapter 10 (Unforeseen Circumstances) of the HCP.

- I. The Permittee and the U.S. Fish and Wildlife Service agree that modification and amendments to the Permittee's HCP and this Permit may occur through its effective term. The following procedures shall govern the modification and amendment process:
1. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the HCP or this Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on the covered species. This analysis shall be conducted jointly by the Permittee and the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M. The U.S. Fish and Wildlife Service or the Permittee will use best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Absent any objection from the U.S. Fish and Wildlife Service or the Permittee, and provided such proposed modification or amendment does not fall within the limits of Condition 11.I.2., the proposed modification and/or amendment will be determined to be minor and shall become effective upon written approval by the U.S. Fish and Wildlife Service or the Permittee. If the Service determines that a proposed modification or amendment would result in either of the conditions set forth in Condition 11.I.2, such proposed modification or amendment must be processed in accordance with Condition 11.I.3.
 2. The U.S. Fish and Wildlife Service will not propose or approve minor modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications or amendments would result in operations under the HCP and Permit that are significantly different from those analyzed in connection with the HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the HCP or additional take of the covered species not analyzed in connection with the HCP.

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3. Any amendment or modification shall conform with all applicable legal requirements, including, but not limited to, the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. §13 and §17.

J. This permit also constitutes a Special Purpose Permit under C.F.R. §21.27 for the take of the Puerto Rican nightjar, brown pelican, and the roseate tern in the amount and/or number and subject to the terms and conditions specified herein. Any such take of these species will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703.12).

K. By March 31 of each year this Permit is in effect, the Permittee shall submit an annual report to the U.S. Fish and Wildlife Service offices identified in Conditions 11.M and N. The annual report shall describe implementation of the terms of this Permit and the HCP. The Permittee shall identify any occurrence of non-compliance with this Permit or the HCP and identify measures employed to resolve such non-compliance. Each annual report shall also include the following certification from a responsible official who supervised or directed the preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

Annual reports shall include biological data or other required information collected through the above-mentioned studies and notifications (Condition 11.G) utilizing the same format of the pre-construction studies. The reports shall also provide detailed information about amount of habitat affected by each component of the Project and on the extent to which the Permittee has complied with each avoidance, minimization and mitigation measure set forth in this Permit and the HCP.

L. Upon locating a dead, injured, or sick brown pelican, roseate tern, Puerto Rican nightjar or any other threatened or endangered species, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, 10426 NW 31 Terrace, Miami, Florida 33172 (305/526-2789). Notification should also be made, by the next work day, to the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or the

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preservation of biological materials for later analysis. In conjunction with the care of sick or injured threatened or endangered species or with the preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.

M. For purposes of monitoring compliance with the terms and conditions of this Permit and the HCP, including, but not limited to, the review of annual reports and coordination on unforeseen circumstances, the contact, address, and phone number of the local U.S. Fish and Wildlife Service office is:

U.S. Fish and Wildlife Service
Caribbean Field Office
P.O. Box 491
Boquerón, Puerto Rico 00622
Telephone: 787/851-7297
Facsimile: 787/851-7440.

N. Copies of annual reports and any other documentation pertaining to the operation and management of this Permit shall also be provided to:

U.S. Fish and Wildlife Service
HCP Coordinator
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: 404/679-7313
Facsimile: 404/679-7081

END