

## Is Renewable Energy Policy Compatible with the Conservation of the Migratory Birds? Challenges for the EIA of the Mega Wind farm project in Soya Region

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### **Summary**

By way of the 2011 amendment of the EIA law, the procedure of the impact assessment at the planning stage of the projects and the online public inspection system has been introduced in Japan to enhance early public participation and transparency of the EIA process, especially for the wind power firms. Is this amendment successful? On the close examination of the on-going EIA process for mega wind farms in Soya area, as well as the related law with some guidelines prepared by government, the author observed that early participation and transparency are heavily hampered by poor accessibility to information and lack of clear policy (not technical) guidance for impact assessment. The author suggest some operational improvements, and conclude that the introduction of SEA would be essential to address the serious environmental risk based on the integrated planning.

### **1. How to integrate two different policy area**

Both addressing climate change and conservation of biodiversity are important policy issues and shall be compatible in the long terms.

Promoting wind power generation is an effective policy tool to realize low carbon or even zero carbon society.

On the other hand, as the introduction of wind power project increases, the opposition to the construction of windfarms dramatically increases. The conflict of views about the site selection is in part attributable to the scientific uncertainty, data deficiency, and different views of data analysis. Some commentator calls it as a “gray zone” problem, and the “social acceptance” of windfarms has been critically discussed in terms of distributive justice or procedural legitimacy.

However it is not adequate if the judgement of socially acceptable risk of significant and irreversible adverse effects on biodiversity is left exclusively to the “consensus building” among parties concerned. To prevent or settle the “Green on Green” conflicts, it is crucial to elaborate the appropriate criteria and methodology for the assessment.

Since the early stages of the development of windfarms in 1990s, the impacts of on birds have been focused and identified potential hazards to birds, not necessarily limited to the bird strikes.

Based on the review of the literature, Birdlife International on behalf of the Bern

Convention issued the report *“Windfarms and Birds: An analysis of the effects of windfarms on birds, and guidance on environmental assessment criteria and site selection issues”* in 2003, updated in 2013, both endorsed by the Standing Committee of the Convention.

In the ten years, there have been advances in wind energy technology and considerable further work on the science of wind energy and avian interactions. Likewise, with the rapid growth of the wind energy industry, there has been a corresponding policy development and good practice for strategic planning for wind energy. The revised, enlarged edition, full of recent findings and lessons learned, still keeps the basic concept of the original version: 1) site selection is the key to mitigate adverse effects on birds; 2) given the scientific uncertainty, governments should take a precautionary approach; 3) the Strategic Planning and associated Strategic Environmental Assessment is a key to reduce potential conflicts between protected bird populations and wind energy development; 4) spatial zoning and site policy criteria, used effectively, can mediate between biodiversity and wind energy interest.

Other globally applicable guidelines have also been adopted, including both EIA and SEA guidance by the Convention on Biological Diversity in 2006, and by the Ramsar Convention in 2008. These voluntary guidelines are more general than the Bern guidance, but share the basic concepts and methodology.

## **2. The amendment of the EIA law in Japan**

In 2010 the Japanese government proposed the amendment of the EIA law, in accordance with the article 25 of the Basic Act of Biodiversity, endorsed by the National Diet in 2011, which requires operators to assess impact of their projects at an early stage, also introduces online public inspection system. By way of the amendment of a government ordinance, wind power generator projects have been included to the subjects of the EIA law. The purpose of the series of the amendments is to ensure early public participation and to enhance transparency of the assessment process, especially for the windfarms projects.

The Ministry of Environment (MOE) issues a series of official guidance documents, such as technical guidance for the review of the EIA for wind power generators in the national park in 2011 (revised in 2014), the EIA guideline for prevention or mitigation of bird strikes in 2011, the basic concept on the EIA for windfarms in 2011, as well as the basic concept on the online publication of the EIA documents in 2012. All of them are not binding, just exemplary.

Compared with the internationally agreed counterparts, the characteristics of these guidance are: limited in scope, highly technical, without any policy guidance, including

no reference to the precautionary approach, site selection, effectiveness of the Strategic Planning and associated SEA. Some of the statements such as the recommendation of the cumulative impact assessment, not required by the current law, are overtly general with no specific criteria. It seems that government prefers to decide on the case by case basis without clear legal or policy bases, expecting to induce operators' voluntary initiatives.

### **3. A Case Study: State of Affairs in Soya Area**

According to the research done by the MOE in 2008, Soya area, North Hokkaido in Japan, is one of the most promising area for mega windfarms. Along with the dramatic changes of national policy for renewable energy, which result in the introduction of FIT in 2011, Ministry of Economy, Trade and Industry designated this area as the prioritized area for the promotion of windfarms, decided to subsidy private companies to provide the intra network of transmission in 2013.

Upon this announcement, dozens of mega windfarms projects are to be prepared by different companies, and under the review of the EIA. It is expected that more than 500 to 1000 wind power generators would be introduced in this area.

In 2015 the map with multiple wind farm planning was disclosed by a local resident. The map shocked people concerned in Soya. Firstly until this disclosure no one knows, supposedly energy companies themselves do not know exactly, so many planning have been introduced on this sensitive area. As stated above, online public inspection is now available for public. However in accordance with the law, each inspection term is prescribed to be one month, and after the end of the term each access site is to be closed. The procedure of online public inspection, to be introduced to enhance public access to information, strangely happened to be the barrier for the public to grasp the whole picture of multiple planning. The MOE, in its *basic concept* on online public inspection, recommends, as far as possible, to keep the EIA documents publicly accessible to the end of the process. However this recommendation is not fully respected neither by individual operator nor by local governments in charge of management of the EIA process, fearing for the risk of infringement of intellectual property rights.

Secondly the map clarified that the planning of mega windfarms with more than 1,000 turbines could be legally permissible. In Japan the site selection of wind farms shall be subject to specific regulations, including national reserved area based on the national park law, or the internationally designated sites as the Ramsar sites. However as long as fulfilling the minimum requirements of the relevant laws, the operators are free to choose profitable sites with no consideration of the site sensitivity. In other words, law gives no guidance for environmentally proper sites for the development of wind farms.

Some local governments try to make adjustments by their voluntary guidelines. For example, the Wakkanai City in its guideline adopted in 2000, revised in 2003, provides the sensitivity map. However the guideline is voluntary and considered to be negotiable. Indeed an operator shows one of its multiple plans on the most sensitive area on the map.

There is neither legal basis nor policy guidance for the strategic planning and associated SEA in Japan. And the current EIA law, with a very limited exception of screening for the second type project, does not require the cumulative impact assessment among multiple projects.

Sometimes operators, at the early planning stage of projects, does not disclose any substantive site information. Although they were harshly criticized by the Governor as nullifying the object of the EIA law, they seemed to successfully clear the first step without being suspended.

Despite the “possibility of incomparable concentration of the planning of wind farms projects”, each EIA process has been proceeding piecemeal, like salami slices, or in Japan, like salmon slices. There seems to be no way to assess and predict the cumulative impact of the whole projects in this area.

Soya area, including a designated area as a national park, the Ramsar site, the BAI, also well known as the habitat of endangered species, on route of the flyway of migratory birds, is by no means one of the most biodiversity sensitive area.

With no biodiversity inclusive guidelines applicable in Japan, deficiencies of baseline data necessary for prevention or mitigation, there remains a high degree of uncertainty in the EIA process. In spite of that, applicability of precautionary approach to the assessment, site selection or decision-making is not clear.

The local resident and a NGO regularly submit their views in each EIA procedure. However given the lack of clear policy guidance or concrete criteria for assessment, how the operators and the decision maker accommodate their views is not clear.

A prefectural Governor and MOE in fact shows harshly critical views to each planning, the contents of their views seem to reflect expert views and in part reflect internationally discussed standards. On the other hand, the gap between very general and exemplary guidance on technical issues and the severe critical views on the exact cases seems to give operators wrong message that “First submit very roughly and revised *ex post* if criticized by the Governor or MOE”, is the most efficient and feasible way, at the cost of effectiveness of early public participation and transparency.

#### **4. Conclusion and recommendation**

The objectives of the amendment of the EIA law to enhance early public participation and transparency, could be hampered by poor accessibility to information and lack of

policy guidance as well as biodiversity inclusive criteria for the assessment.

Especially it is submitted that the current law does not anticipate the concentration of wind farms in the economically profitable but environmentally sensitive area.

Some operational improvements could be possible. Firstly Wild Bird Society of Japan recently announced that it intend to produce a sensitivity map for the area. Based on the sensitivity map, all the party concerned could agree on the collaborative strategic planning which would mediate between biodiversity and wind energy interest. Secondly access to information should be improved. Close examination on a case law and recent initiatives by some companies, national and local governments suggest that defense of intellectual property rights is no longer considered to be absolutely legitimate. To ensure open access to EIA documents throughout the process seems to be considered reasonable. Thirdly operational guidelines, if complied based on the published views of Governor or MOE, would be useful references as a *de facto* criteria for EIA process.

In any way the EIA procedure is not in a legal or policy vacuum. Based on the high level policy integration, it is essential to amend the EIA law to include the SEA to address the compatibility issues in the future.

Saiko Shiraki, "Collisions of White-tailed Eagles, *Haliaeetus albicilla*, with wind turbines in Hokkaido", Japan, *Japanese Journal of Conservation Ecology*, Vol.17(1), 85-96, 2012.

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