



Shaping the future for birds

August 3, 2011

Attention: Wind Energy Guidelines
Division of Fisheries and Habitat Conservation
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Mail Stop 4107
Arlington, VA 22203-1610 Wind Energy Guidelines

Subject: Comments on Draft Two of Wind Energy Guidelines

Dear U.S. Fish & Wildlife Service:

Thank you for the opportunity to comment on Draft Two of the U.S. Fish and Wildlife Service's Voluntary Wind Guidelines. American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization dedicated to the conservation of native birds and their habitats throughout the Americas. Founded in 1994, ABC is the only U.S.-based group with a major focus on bird habitat conservation throughout the entire Americas. ABC acts across the full spectrum of threats to birds to safeguard the rarest bird species, restore habitats, and reduce threats, unifying and strengthening the bird conservation movement. ABC has offices in Virginia and the District of Columbia, and additional staff in Georgia, Hawai'i, Idaho, Missouri, Montana, New York, Oregon, and Texas.

ABC appreciates the many years of dedicated work that the U.S. Fish and Wildlife Service (FWS) has put into the Wind Guidelines Federal Advisory Committee (FAC) process and the Draft Voluntary Wind Guidelines. However, we are very concerned with the resulting document and the process by which it was produced. Draft Two replaces much of what FWS experts wrote in Draft One with text directly from the FAC recommendations, which were not peer reviewed by The Wildlife Society, unlike Draft One. In addition, Draft Two has only a 23-day public comment period, which is not adequate for a document that has changed by at least two-thirds from the previous draft.

We are also concerned that at the July 20-21 FAC meeting, some industry representatives on the FAC urged FWS to weaken wildlife protections further. At times they attempted to modify language that came directly from the FAC recommendations, and which, as members of the FAC, they had previously agreed to. We urge FWS to remain firm in its commitment to fulfill its federal trust responsibilities as it responds to requests to weaken wildlife protection.

ABC offers the following comments on Draft Two of the Voluntary Wind Guidelines:

1. We appreciate that the sage-grouse and prairie-chicken guidance has been put back into the Guidelines instead of being put on a Web site. We think this will make that guidance more likely to be used. While we know that FWS has concerns about keeping this

information up to date by locating it in the Voluntary Guidelines instead of on a more easily updated Web site, Draft Two of the Voluntary Guidelines is already going to require frequent modification. The new text references specific studies that will be superseded by advances in the field.

2. ABC also appreciates that Draft Two has, in many places, clarified who has responsibility for an action (i.e., developers and operators or FWS). Such clarity is helpful not only to FWS and the industry, but also to staff at state agencies and municipal governments.
3. ABC supports wind power if it is developed thoughtfully and responsibly, using bird-smart principles. Bird-smart wind power implements careful siting considerations, operation and construction mitigation, bird monitoring, and compensation to reduce and redress unavoidable bird mortality and habitat loss, issues that the federal government should include in mandatory wind standards. While the Voluntary Wind Guidelines take important steps in this direction, ABC believes that mandatory standards are needed to ensure that wind development does not irreversibly damage our natural heritage. We believe that such standards would serve both industry and birds best by providing a degree of certainty for both that is otherwise lacking. Unfortunately, Draft Two is voluntary, and thus will not provide that needed certainty.
4. ABC is particularly concerned with the anticipated funding shortfall at FWS and the difficulty for FWS to comply with Draft Two's 60-day requirement for response to specific plans submitted by developers. Without significantly increased funding to review and comment on individual proposals, FWS will not be able to perform its statutory obligations in protecting wildlife and their habitats. This is of great concern given Secretary Salazar's statement at the July 21st FAC meeting that FWS faces a potential 22% budget cut. If the 60-day requirement remains in the Voluntary Guidelines, under no circumstances should wind developers or operators receive "benefit of enforcement discretion" for projects that did not receive specific FWS comments. The Voluntary Guidelines are currently unclear as to whether such projects could receive that benefit.
5. Enforcement of current laws and regulations will be critical if the FWS wishes the Voluntary Guidelines to be followed. This will not only require prioritized funding for enforcement, but also a changed attitude toward enforcement. Historically, BGEPA and MBTA have not been enforced at any wind projects, and this lack of enforcement is well known. Unless there is a credible possibility of enforcement, the Voluntary Guidelines will be ineffectual.
6. Adaptive management must be retained in the Voluntary Guidelines because it is a critical component of responsible renewable energy production. If wind development is planned in high-risk areas or if a site is not identified as high risk until after operation begins, adaptive management measures such as short-term curtailment and manipulated cuts in speed used to protect migratory wildlife and bats will be necessary in order to comply with existing laws. These measures are analogous to the controlled release of

water at hydroelectric facilities to protect fish resources or the temporary curtailment of emissions from conventional power plants to comply with Air Resources Board regulations on air quality. Both of these examples of adaptive management reflect current best management practices for energy projects and demonstrate that all energy sectors that injure environmental resources need to be managed. The wind energy industry is not being singled out unfairly.

In addition, developers can prevent the need for adaptive management through project siting that avoids critical wildlife areas, or if pre-construction evaluations are done realistically and projects sited in high-risk areas are identified as high risk, the necessary adaptive management can be factored into the financing package, reducing uncertainty. Furthermore, if preconstruction studies are poorly done, and do not accurately identify the environmental risks, the additional costs of adaptive management should act as an incentive for projects to perform realistic preconstruction studies.

7. ABC thinks it is very important that the Voluntary Guidelines retain recommendations to prepare Avian and Bat Protection Plans (ABPP). These plans not only help wildlife, but also help wind developers create support for their projects by demonstrating their concern for wildlife.
8. Compensatory mitigation is another area of concern. By making the trigger for compensatory mitigation “significant adverse impacts” rather than “adverse impacts” (as it was in the previous draft), Draft Two would result in less compensatory mitigation. This will make it more difficult for FWS to manage cumulative impacts, something it must do to adequately protect the bird species for which it is responsible. In addition, as defined in the Guidelines’ glossary, “significant” does not just cover context and intensity, but also which species are affected. As written, it is unclear whether listing under the Migratory Bird Treaty Act (MBTA) alone would qualify species for having impacts to them classified as “significant” (and thus in need of compensatory mitigation). In order for FWS to fulfill its statutory obligations, all MBTA species should be provided compensatory mitigation.
9. The language explaining “benefit of enforcement discretion” has been clarified from the previous draft, but there are still some areas that need further clarification. For example, it is unclear whether the Voluntary Guidelines extend benefit of enforcement discretion to the Bald and Golden Eagle Protection Act (BGEPA), in addition to the MBTA. The language should be clarified to ensure both the MBTA and BGEPA are properly enforced. Similarly, greater clarity is needed in relation to projects that are far along in the development process or already operating. The Voluntary Guidelines should specify that those projects would not receive benefit of enforcement discretion. In addition, if at the end of Tier 2 a site is shown to likely have high risk of significant adverse impacts and a developer chooses to proceed anyway, the Voluntary Guidelines should make clear that there will be no benefit of enforcement discretion for that project.
10. Consideration of barrier effects has been completely removed from this draft and should be restored. The proposed Chokecherry wind project in Wyoming would total 675

turbines, and it is easy to see that there could be barrier effects resulting in energetic impacts if birds fly around the facility rather than through it. This will not be the only large project proposed in the U.S., and as large areas fill up with wind turbines (e.g., Tehachapi Mountains in California), the cumulative barrier effects will need to be analyzed.

11. Consideration of noise impacts has been greatly lessened from the previous draft. It is ABC's understanding that some members of the FAC are interested in possibly using noise as a wildlife deterrent. If noise will be considered as a possible deterrent at a particular wind farm, it is all the more important to have a good assessment of current sound levels and possible effects on birds, but developers will not know they should do this unless it is addressed in the Voluntary Guidelines.
12. Page 24 of Draft Two discusses areas that could be inappropriate for wind energy development. Please add American Bird Conservancy's Globally Important Bird Areas to that list. By definition, these are areas of global importance to birds, and they are not identical to Audubon's Important Bird Areas (IBAs). Adding ABC's Globally Important Bird Areas will be especially important in states where Audubon IBAs have not yet been designated (e.g., North and South Dakota). See *The American Bird Conservancy Guide to the 500 Most Important Bird Areas in the United States* (2003).
13. In Draft Two, many best management practices have been removed or weakened, such as the recommendations to avoid active construction during key times for wildlife, use of wildlife-compatible fencing, closure and revegetation of unnecessary roads after construction, the preference for undergrounding connecting power lines, use of as few permanent guyed meteorological towers as possible, consideration of wildfire risk and wildfire emergency response planning, and removal of all infrastructure (not just overhead power lines) upon decommissioning. The Best Management Practices section is extremely important because it is likely to influence heavily what states and local governments adopt themselves. ABC urges returning to the best management practices written by FWS staff, or else retitling the section. After all, these are "best management practices," not "most convenient management practices."
14. The discussion of Altamont Pass in Section 3 of Chapter 6 (page 89) downplays the seriousness of Golden Eagle mortality there and should not be used as an example of Assessment of Population-level Impacts without substantial rewrite. The text, which came from the FAC recommendations, not from FWS staff, implies that the eagle fatalities at Altamont pass are not significant (i.e., the eagle population is self-sustaining, and all breeding territories are filled). However, the same 2006 study by G. Hunt and T. Hunt referenced in this section (*The Trend of Golden Eagle Territory Occupancy in the Vicinity of the Altamont Pass Wind Resource Area: 2005*) suggests that there is more than sufficient reason to be concerned about population-level impacts at Altamont Pass. See, for example, the study's observation that turbine blade strikes kill more eagles than are produced within the area surveyed, thereby demanding a flow of recruits from outside the area to fill breeding vacancies as they occur (paraphrase of Hunt and Hunt page 8). This is the classic definition of a "population sink."

If this Altamont Pass section remains in the Voluntary Guidelines, it is important that it accurately depict what has been happening. After all, if the 1,000+ Golden Eagle and more than 18,000 other raptor fatalities at Altamont Pass are not significant, it is unlikely that any project in the U.S. will ever be considered to have a significant number of fatalities.

15. The language for assessment of migratory birds on Page 53 (Chapter 4 Tier 3 Field Studies: “In general, pre-construction nocturnal studies are not recommended unless the site has features that might strongly concentrate nocturnal birds,...”) essentially allows the developer to disregard any nocturnal migratory bird impact considerations. This should be remedied. In addition, who will make the decision as to whether a site has features that might strongly concentrate nocturnal migrants: the developer or the FWS regional office?
16. Table 1 Page 66 indicates that for projects constructed with a high risk of significant adverse impact the developer should consider “Additional years [of study] beyond the “Moderate” level... Where the risks to species are determined to be “high,” this determination must be quantified in regard to the status, vulnerability, chronology, and adverse effects to each affected species.” If these Voluntary Guidelines are to be taken seriously, the recommendation should be that the project should be abandoned if risk of significant adverse effect is high. Otherwise, there will be no basis for prosecution if a developer follows these Voluntary Guidelines and significant adverse impact occurs.
17. Regarding carcass searches (page 69), an interval of 14-28 days is far too great to adequately assess collision fatality. Most small carcasses are taken or consumed by scavengers within 48 hours. Large birds would be the only carcass fragments if any remaining after 14-28 days. This will also impact Section 2 of Tier 5, which discusses research that requires daily carcass searches: the necessary data would not be collected.
18. In Chapter 5 section 7 (page 76), FWS must be the agency that makes the decision as to whether fatalities are significant. Otherwise there will be no basis for prosecution of illegal take.

Thank you for this opportunity to comment on the Draft Two Voluntary Wind Guidelines. Please continue to keep ABC on the notification list for the Guidelines process.

Sincerely yours,

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