



Shaping the future for birds

May 19, 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: Wind Energy Guidelines Comments

Dear U.S. Fish & Wildlife Service:

Thank you for the opportunity to comment on the U.S. Fish and Wildlife Service's Draft Voluntary Wind Guidelines. We offer them on behalf of American Bird Conservancy, American Birding Association, Bird Refuge of York County, Center for Native Ecosystems, Chesapeake Wildlife Heritage, Desert Cities Bird Club, Endangered Habitats League, Environmental Protection Information Center, Friends of Dyke Marsh, The Lands Council, Lehigh Gap Nature Center, Long Point Waterfowl, Madison Audubon Society, North Fork Audubon Society, Oregon Wild, St. Louis Audubon Society, Salem Audubon Society, Saving Birds Thru Habitat, The Trumpeter Swan Society, Western Nebraska Resources Council and Wisconsin Audubon Council. Brief descriptions of these groups appear at the end of this letter.

Although wind power can be an important part of the solution to global climate change, wind farms can impact birds—including eagles, songbirds, and endangered species—through collisions with turbines and associated power lines, and through loss of habitat. By 2030, there are expected to be more than 100,000 wind turbines in the U.S., and these are expected to kill at least one million birds each year—probably significantly more. Wind farms are also expected to impact almost 20,000 square miles of bird habitat, and another 4,000 square miles of marine habitat, some of it critical to threatened species.

These concerns mean that wind power will have to be developed thoughtfully and with regulation by the U.S. Fish & Wildlife Service (FWS) to prevent violations of the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and the Endangered Species Act. We appreciate the many years of dedicated work that FWS has put into the Wind Guidelines Federal Advisory Committee (FAC) process and the draft guidelines. We offer the following comments on the Draft Wind Guidelines, in order to increase their effectiveness.

- 1) **The guidelines must be strengthened and made mandatory.** FWS has proposed voluntary guidelines for avoiding and minimizing wildlife impacts from wind energy development, and has said that it will not refer violations of the Migratory Bird Treaty Act for prosecution if a developer adheres to the voluntary guidelines and communicates with FWS. In response, AWEA, the wind industry's trade association, is on record as saying that the industry doesn't

support the guidelines, even though they are voluntary¹. This statement, combined with the litany of wind farms that are deadly to birds but have continued to operate for decades without MBTA or BGEPA prosecutions, especially Altamont Pass, indicates that voluntary guidelines are unlikely to work.

In addition, mandatory standards will encourage the development of wind energy by providing much greater certainty to wind developers and wind financiers about what will be required of wind projects. Mandatory standards will also result in a level playing field, so that conscientious developers and operators will not be at a competitive disadvantage compared to less responsible developers. There is currently great variation among wind projects and wind developers in the amount of consideration for wildlife and habitat. However, in order for FWS to fulfill its mandate to protect wildlife, all projects and developers need to be held to mandatory standards. In particular, without a requirement to do so, many developers will likely never contact FWS, so risk assessments will not be possible.

In addition to being made mandatory, the guidelines need to be strengthened, per the recommendations below.

- 2) **All parts of the guidelines necessary for bird protection should be included in mandatory standards, not left out of the standards and put on a website where they could easily be ignored or changed due to political pressure.** For example, important information about how far wind farms should be built from sage-grouse leks (breeding display areas) has been relegated to the website. In addition, using the website for vital information raises questions about what will be considered adherence to the guidelines for purposes of avoiding prosecution.
- 3) **Pre-construction studies: Pre-construction study duration should be tied to anticipated risk and conducted when bird use can be expected to be at its peak at the selected site.² Surrogate data (data from one location extrapolated to another) should not be used.** The draft guidelines are inconsistent on their minimum pre-construction study duration, in one place saying “no less than three years,” in another saying three years “may be appropriate in many instances,” in yet another saying “A reduced level of survey effort may be warranted for certain projects.”
- 4) **We support the draft guidelines’ description of the wind development process as five tiers (steps) and agree that wind developers should consult with FWS at each tier.** However, the guidelines should clarify the steps FWS will take to ensure that projects are not built at sites determined through the tiered process to pose substantial risk to birds. While conscientious developers would not proceed with projects in high-risk sites, conservation groups hear of projects going ahead in areas that pose substantial risk to birds. Some of these projects are proposed by newcomers to the wind industry in locations from which more seasoned developers have walked away, again demonstrating the need for a level playing field.

¹ American Wind Energy Association, “Statement on Interior’s proposed wildlife guidance for wind turbines.” February 15, 2011.

² American Bird Conservancy will clearly define these areas of risk to birds in a Wind Development Risk Map, expected to be published in the near future.

If adverse effects of a project are not able to be avoided, minimized or mitigated, the project should not be developed (i.e., should not be permitted). Its developer certainly should not receive assurances of freedom from prosecution.

- 5) **We support the draft guidelines’ call for “adaptive management” to be proposed by the developer and discussed with FWS to adjust the level of mitigation.** We recommend use of the Department of Interior (DOI) Adaptive Management Technical Guide and agree that this is preferable to developing a whole new set of adaptive management guidelines just for wind projects.
- 6) **Mandatory buffer zones of approximately five miles from sage-grouse leks and core areas, and two miles from prairie-chicken leks and core areas should be included.** These buffer zones were included in the original recommendations from the FAC.

Sage-grouse and prairie-chickens are not covered by the MBTA, but are at risk from all types of energy development, including wind energy. They are also not currently listed under the Endangered Species Act (ESA), but Greater Sage-Grouse, Gunnison Sage-Grouse, and Lesser Prairie-Chicken are all on the recent ESA Work Plan that FWS filed with the U.S. District Court for the District of Columbia. The presence of these species on the Work Plan indicates that there is a possibility that they may become ESA-listed within six years. ESA listing would have consequences for both existing and future wind projects, so it would be prudent to provide adequate protection for them now.

- 7) **Habitat fragmentation and cumulative impacts of wind projects should be given more emphasis in Tiers 1 and 2 (the early planning stages of a project when site screening and characterization occur).** While habitat fragmentation is discussed in multiple tiers, cumulative effects are not. In fact, within the tier descriptions, the word “cumulative” appears only in Tier 4. The consideration of cumulative impacts appears in the guidelines’ introduction, but needs to be worked more into the tier descriptions and emphasized in Tiers 1 and 2. Some birds such as the Whooping Crane, sage-grouse, and prairie-chickens face potentially great loss of habitat due to wind farms and associated transmission lines, but this risk is more visible at the cumulative level rather than on a project level. As a result, some sites should not be developed.

Habitat fragmentation is an important contributor to cumulative impacts. It is easy to predict the extent of habitat fragmentation from the early blueprints of a project since the project’s footprint and infrastructure needs such as access roads, transmission lines, and substations are already fairly well determined by that time. Similarly, consideration of adjacent projects, farming, mining, development, transmission, etc., can be done early in project planning (but may need to be reviewed if other projects are added during the development phase).

- 8) **We support the draft guidelines’ stronger policies on take and take permits for eagles, as well as the need for Eagle Conservation Plans.** American Bird Conservancy will be submitting comments on the Draft Eagle Guidance under separate cover.

- 9) **We support the draft guidelines in designating that project developer complaints be responded to within the established FWS/DOI chain of command.** The FAC recommendations called for a Washington, D.C. “czar” to respond to wind developer complaints, which could make the complaint process more susceptible to political interference.
- 10) **We support the draft guidelines’ language giving wind farm operators freedom from prosecution under existing law only if the guidelines are made mandatory and are enforceable.** We do not support the idea of “letters of assurance” granting freedom from prosecution in return for adherence to voluntary guidelines and communication with FWS.
- 11) **The draft guidelines should be revised to require compensatory mitigation from all wind farms operators** to redress the loss of any birds or habitat unavoidably harmed by construction and operation, including deaths caused by collisions with turbines and their associated power lines, and lost or degraded habitat (e.g., areas of abandoned habitat) to a net benefit standard. Currently the guidelines suggest that compensatory mitigation may only need to be considered in some circumstances even though *all* wind farms are expected to kill at least some birds. Requiring some compensatory mitigation for each wind farm will also provide a mechanism for redressing one of the toughest challenges in making wind power bird-smart: wind energy’s cumulative impacts on birds and bird habitat (see 7 above).
- 12) **The draft guidelines should be revised to require Avian and Bat Protection Plans for all wind farms.** These plans provide operational and mitigation requirements to minimize take of wildlife.
- 13) **The draft guidelines should be revised to clarify that research, while often quite helpful, is not a substitute for mitigation or compensation.** Studies do not result in increased bird reproduction to compensate for birds killed, nor do they replace habitat that is lost or degraded. The draft guidelines promote research by project developers and describe several ways that research can be useful.
- 14) **The draft guidelines should be revised to require an application for an Incidental Take Permit if there is reason to believe that endangered bird or bat species are present.** Currently, the draft guidelines discuss Incidental Take Permits in the context of Habitat Conservation Plans and compensation, but leave applying for an Incidental Take Permit as voluntary. Since there is no legal take of ESA-listed species without an Incidental Take Permit, applying for the permit cannot be voluntary.
- 15) **Given the well-established connection between power lines and bird mortality, as well as the fact that wind power build-out will require more lines to be built, the guidelines should be revised to require wind farm operators and associated companies providing transmission connections to follow Avian Power Line Interaction Committee (APLIC) guidelines.** Currently, APLIC guidelines are mentioned as an industry best management practice but not required.

In closing, we support wind power when it is bird-smart, and believe that birds and wind power can co-exist if the wind industry is held to mandatory standards that protect birds. Bird-smart

wind power employs careful siting, operation and construction mitigation, bird monitoring, and compensation, to reduce and redress any unavoidable bird mortality and habitat loss. The Draft Wind Guidelines take good steps toward these measures, but need some changes in order to truly protect birds.

Thank you for this opportunity to comment on the Draft Wind Guidelines. Please add the undersigned groups to the notification list for the guidelines.

Sincerely yours,

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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.

The American Birding Association is a non-profit 501(c)(3) organization that inspires all people to enjoy and protect wild birds. The American Birding Association represents the North American birding community and supports birders and bird conservation through our publications, conferences, workshops, tours, partnerships, and networks.

Bird Refuge of York County rehabilitates injured and orphaned wild birds and herons from the Central Pennsylvania area and returns them to the wild.

Center for Native Ecosystems works to conserve and recover the native species and ecosystems of the Greater Southern Rockies region using the best available science.

Chesapeake Wildlife Heritage is dedicated to creating, restoring and protecting wildlife habitat and establishing a more sustainable agriculture through direct action, education and research in partnership with public and private landowners.

The Desert Cities Bird Club serves the Coachella Valley of California, providing bird-related information for a 12-city area.

The Endangered Habitats League is dedicated to the protection of the diverse ecosystems of Southern California and to sensitive and sustainable land use for the benefit of all the region's inhabitants.

The Environmental Protection Information Center (EPIC) works to protect and restore ancient forests, watersheds, coastal estuaries, and native species in Northern California. EPIC uses an integrated, science-based approach, combining public education, citizen advocacy, and strategic litigation.

The mission of Friends of Dyke Marsh is to monitor, protect and restore the marsh and its flora and fauna by working in cooperation with the public, state and local governments and the U.S. National Park Service; and to enjoy the marsh and all that it has to offer.

The Lands Council is a local grassroots, non-profit based in Spokane with about 1,500 members, dedicated to protecting the quality of life in the Inland Northwest.

The Lehigh Gap Nature Center is a non-profit, member-run conservation organization located in the Lehigh Gap of Pennsylvania at the foot of the Kittatinny Ridge, between the towns of Slatington and Palmerton. Our mission is to preserve wildlife and habitat through conservation, education, and research for the benefit of the earth and all its inhabitants.

Long Point Waterfowl (LPW) is a non-profit, non-government organization dedicated to waterfowl- and wetland-related research, conservation and training, as well as to the celebration of our outdoor heritage. The primary purpose of LPW is to study the staging ecology and requirements of waterfowl on the lower Great Lakes. We also monitor trends in the

distribution and abundance of waterfowl, perform research on waterfowl habitats, and generate information useful for management purposes.

Madison Audubon Society, with more than 3,000 members, has advocated on behalf of birds and other wildlife since 1937, working at all levels to address the many threats they face.

North Fork Audubon Society connects people with nature. We promote the preservation of birds and wildlife by protecting and restoring critical habitats of Long Island's North Fork. Our hands-on environmental and natural science programs encourage individuals of all ages to participate. We aim to grow a strong community of active members and supporters who value nature.

Oregon Wild is a nonprofit organization that protects and restores Oregon's wildlands, wildlife and waters. It was founded in 1974 and currently has 7,000 members and supporters.

The St. Louis Audubon Society is affiliated with the National Audubon Society and has 3,300 members in the eastern region of Missouri. Our mission is to conserve and restore natural ecosystems, primarily birds and other wildlife and their habitats, for the benefit of humanity and the earth's biological diversity.

Salem Audubon Society has about 1100 members, and promotes conservation and environmental education in the mid-Willamette Valley.

The mission of Saving Birds Thru Habitat is to protect, enhance and restore habitat for North American birds and to educate people of all ages about this important mission and how to achieve it.

The Trumpeter Swan Society is a non-profit organization dedicated to assuring the vitality and welfare of wild Trumpeter Swan populations.

The Western Nebraska Resources Council, a 501(c)(3), non-profit organization, was formed originally in 1983 by local citizens concerned about the degradation and threats to our native ecosystems that complement our Western Nebraska health and lifestyle, with a focus on water quality. Since then we have continued to serve as an active advocate for citizens' rights to exist within a healthy climate. We achieve this purpose through public education, community participation, and by advocating responsible laws and governmental regulations.

Wisconsin Audubon Council represents 14 Audubon chapters and 7,000 National Audubon members in Wisconsin. We promote the conservation of all natural resources, including birds, for the benefit of nature and society.