

January 29, 2013

Sarah Nystrom  
Ecological Services  
300 Westgate Center drive  
Hadley, MA 01035

Dear Ms. Nystrom:

The following are the scoping comments of American Bird Conservancy (ABC) on the proposed Great Bay Wind Energy project in Somerset County, MD.

ABC supports the development of clean, renewable sources of energy such as wind power, but also believes that it must be done responsibly and with minimal impact on our public trust resources, including native species of birds and bats, and particularly threatened, endangered and protected species. ABC is a proponent of Bird Smart Wind Energy, which is described in some detail on our web site ([http://www.abcbirds.org/abcprograms/policy/collisions/wind\\_developments.html](http://www.abcbirds.org/abcprograms/policy/collisions/wind_developments.html)). In the case of wind energy, careful wind generation siting is crucial in preventing the unintended impacts to America's native bird species, and ABC is concerned that the proposed site for this project poses an unacceptably high potential risk to protected wildlife species. This risk can be substantial, depending on the circumstances (Smallwood, 2013). We therefore ask that the US Fish & Wildlife Service (FWS) consider the following in its development of a draft Environmental Assessment (EA) for this project:

### **Bald Eagle Fatalities**

According to the American Wind and Wildlife Institute (AWWI), "Generating electricity from wind can wound or kill eagles when they collide with turbine blades, and can also disturb eagles during construction and operation of the wind energy facility resulting in nest abandonment or displacement from breeding territories." The FWS estimates that there are at least 30 breeding pairs of bald eagles within 10 miles of this project (FWS Scoping Meeting, January 15, 2014, Taylor 2014) potentially placing many breeding birds in jeopardy. Any eagle fatality is a violation of the Bald and Golden Eagle Protection Act (BGEPA), and ABC is particularly concerned about the potential long-term impact of this facility on the Bald Eagle population in Chesapeake Bay. Consequently, we will be looking very closely at the scientific basis for the modelling of estimated eagle fatalities and population impacts presented in the draft EA. We are aware that these models have not been thoroughly tested for validity and that, consequently, they may be inaccurate. We are also aware that fatalities alone may not measure the overall impact of these turbines on eagle reproductive success, which can also impact the population over the long-term. Another concern is the potential cumulative effects of this project combined with other wind energy developments that may be planned for this area, now and into the future. All of these factors introduce a level of uncertainty that will make it difficult to accurately assess the impact of the proposed facility until it is up and running, and then it may be too late. In fact, wind energy is just one of many factors impacting Bald Eagle populations in the Bay. Others include habitat loss, human disturbance, contaminants and disease (Watts, et al., 2007). The impact of wind energy on Bald Eagles cannot be considered in isolation from these other major sources of mortality, that is, if the goal is no net decrease in the region's bald eagle population. While the population has expanded in recent years,

primary due to the ban on DDT (Watts, et al., 2005), this could change quickly with the right combination of negative anthropogenic factors, including wind energy development.

One other concern involves the types of turbines being proposed. We are aware of a recent proposal to increase the size of turbines at the site to 600-foot tall 1.6 MW turbines. We assume that the FWS is aware of the recent study by Loss et al. (2013), which showed that the risks posed to birds by these taller, monopole turbines is actually greater when compared with smaller turbines, and this should be taken into careful consideration during EA preparation and in the subsequent risk assessment.

### **Endangered and Protected Species**

ABC assumes that the EA will include sections assessing the potential impact on any species protected by the Endangered Species Act (ESA) (e.g., The Delmarva fox squirrel, *Sciurus niger cinereus*, which is found in the area) and Migratory Bird Treaty Act (MBTA). This would include extensive surveys, literature reviews, and other information intended to identify any risks to protected species. ABC will be examining these sections of the EA very closely and consulting its own experts regarding the potential risks, particularly to threatened, endangered and protected species, including migratory birds. Any risk to such species would likely trigger the need for a more detailed Environmental Impact Statement (EIS) as required under NEPA.

### **Take Permit Concerns**

Under the BGEPA it is expressly forbidden to “take...any bald eagle...or golden eagle, alive or dead, or any part, nest or egg thereof...” Preliminary assessments are that this project is expected to kill 20 eagles per year (FWS Scoping Meeting, January 15, 2014). While the FWS considers whether or not a take permit will be issued for our national symbol or any other protected bird, the developer and FWS should disclose and evaluate any proposed mitigation measures such a take permit will require in order to minimize eagle and migratory bird fatalities, including, but not limited to modifications to project design, location of turbine arrays (including alternative sites), equipment specifications, number of turbines, height of turbines, lighting, other infrastructure (transmission lines, roads), prey availability, and other relevant features of the project. ABC appreciates that FWS has worked with the developer for three years to develop mitigation measures (Taylor, 2014), but respectfully reminds the Service that their primary obligation is to protect our public trust resources, not to facilitate wind energy development. Levels of mortality that will trigger additional adaptive management must be identified, as well as the methods used to derive those estimates. In addition, the developer will need to implement compensatory mitigation or compensation to offset any mortalities to result in no net loss to the population. Such measures would need to be disclosed and fully evaluated during the evaluation process.

### **Radar Baseline and Survey Information**

ABC assumes that the draft EA will contain sufficient survey and range information on any listed threatened, endangered or protected species covered under the ESA, BGEPA or MBTA, including an assessment of their movements through the area during migration and any major nesting, roosting or foraging sites (e.g., Watts and Mojica, 2012). This would be complemented by radar data or other data that could assist in risk assessment.

ABC understands that such studies have been or are being conducted and expects that all information regarding the status of and risk to public trust resources will be made openly available to the media, the public and to conservation groups, such as ABC for analysis. Complete transparency will be critical and expected, as this project has already generated considerable public controversy. .

### **Proximity to Wildlife Habitat/Sensitive Bird Conservation Areas**

In assessing risk, it will be important to consider the project's proximity to sensitive wildlife habitats, such as wetlands, wildlife refuges, etc. ABC has developed a map for wild developers to use as a siting tool. More specifically, this map identifies important bird conservation areas. From our initial inspection, this site is adjacent to, though not in, some sensitive areas as identified on the ABC map and is also close to wildlife refuges and sensitive Bay habitat. It therefore deserves closer scrutiny. ABC appreciates that the site has been moved from its original location to take it further away from the Atlantic Flyway, Blackwater National Wildlife Refuge and Pocomoke River Watershed, but concerns remain. Indeed, there may be special concerns related to wind energy facilities located on agricultural lands near large wetlands, such as occurs on or near the Chesapeake Bay (Grotsky et al., 2013).

### **Range of Alternatives**

ABC expects that the draft EA will include an evaluation of a reasonable range of action alternatives that will minimize impact on birds, bats and other wildlife and their habitats, including, but not limited to, the number and size of turbines, as well as a reasonable range of siting and array alternatives. .

### **Post-construction Monitoring, Mitigation and Compensation**

ABC looks forward to reviewing the Eagle Conservation Plan and other planned actions intended to mitigate the potential impact of this site on birds (and bats). That being said, if this project is allowed to go forward, then an effective system of post-construction monitoring of bird (and bat) fatalities must be in place as a condition of approval. Such evaluations should be conducted by a credible independent contractor with relevant expertise, and not by the developer themselves. The contractor should have no supervisory ties to the developer and thus not be beholden to them in anyway. Furthermore, the contractor should not have worked previously for the developer and developed a mutually supportive relationship with them. This will insure complete independence and help avoid any conflict of interest. In addition, the contractor must use best practices to measure bird (and bat) fatalities at the site, compensating for observer detection probability and removal of carcasses by predators (see Smallwood, 2013).

Conservation plans should identify effective methods of mitigation, not just at the turbines themselves, but also at the associated transmission lines and other infrastructure, such as roads. This could include micro-siting of turbines, lighting, habitat management, seasonal or temporary shutdowns, radar monitoring and other proven practices to help minimize bird (and bat) fatalities.

Sincerely,

Michael Hutchins, Ph.D.  
National Coordinator, Bird Smart Wind Energy Campaign

### **Literature for Consideration**

Grodsky, S.M., Jennelle, C.S., and Drake, D. 2013. Bird mortality at a wind-energy facility near a wetland of international importance. *The Condor* 115(4): 700-711.

Loss, S.R., Will, T., and Marra, P.P. 2013. Estimates of bird collision mortality at wind facilities in the contiguous United States. *Biol. Cons.* 168: 201-209.

Smallwood, K.S. 2013. Comparing bird and bat fatality-rate estimates among North American wind-energy projects. *Wildl. Soc. Bull.* 37(1): 19-33.

Taylor, P. 2014. Md. Wind farm seeks eagle permit. *E&E News*, January 7, 2014:  
<http://wind3.herokuapp.com/posts/39520-md-wind-farm-seeks-eagle-permit#.UuICZ013uUk>

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Watts, B.D., Therres, G.D., and Byrd, M.A. 2007. Status, distribution and the future of bald eagles in the Chesapeake Bay area. *Waterbirds* 30 (Special Publication 1): 25-38.

American Bird Conservancy (ABC) is a 501(c)(3) not-for-profit membership organization whose mission is to conserve native birds and their habitats throughout the Americas. ABC acts by safeguarding the rarest species, conserving and restoring habitats, and reducing threats, while building capacity in the bird conservation movement. More at [www.abcbirds.org](http://www.abcbirds.org)

