



Shaping the future for birds

September 23, 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

Subject: Comments on Draft Three of Wind Energy Guidelines

Dear U.S. Fish & Wildlife Service:

Thank you for the opportunity to comment on Draft Three 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.

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. While the Voluntary Wind Guidelines take important steps towards these principles, 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 Three is voluntary, and thus will not provide that needed certainty.

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 remain concerned about the resulting document and the process by which it was produced.

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

1. Draft Three's 10-day public comment period is too short and has discouraged public participation. Because FWS did not release a redline version of Draft Three, commenters who wished to fully understand changes between Drafts Two and Three had to manually compare the documents. While substantive added text was marked in Draft Three, substantive deletions were not. Chapter eight in particular had substantive deletions that could only be detected by doing a laborious page by page comparison. In addition, the summary of changes released by FWS focused on issues that had been raised by the Wind Turbine Guidelines Advisory Committee (FAC) and did not note other changes,

such as additions to the Best Management Practices section and new legal assurance language regarding eagles.

2. ABC is concerned that the benefit of enforcement discretion language in Draft Three will, at the very least, make it much more complicated for FWS to enforce the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) at wind facilities. We think it likely that added complexity will result in no enforcement of MBTA and BGEPA going forward, not only for new wind projects, but also at existing projects. To date, MBTA and BGEPA have never been enforced at a single wind energy project, so complicating enforcement with these Guidelines does not seem likely to result in future enforcement actions.
3. The system of enforcement discretion set up by the Voluntary Wind Guidelines is inappropriate because it abandons FWS's mandate to protect wildlife. Under the new Guidelines, wind companies and the consultants they hire will essentially self-certify that their projects are in adherence with the Guidelines. This compounds an existing problem that David Cottingham, Senior Advisor to the Director of FWS, described at the FAC meeting on September 20: FWS apparently has trouble getting wind developers to share pre-construction studies and post-construction mortality data with them due to developers' desire to make this information unavailable to Freedom of Information Act Requests. It is difficult to understand why FWS would consider offering assurances of law enforcement discretion to wind projects when, by its own admission, the agency cannot reliably obtain the information needed to make recommendations to developers.
4. The September 20 FAC meeting also revealed a potentially serious problem with post-construction mortality studies. One FAC member objected to the Guidelines' suggestion to obtain salvage permits for collecting carcasses at wind facilities and said her company does not allow its employees to pick up dead animals. This complicates identification of, for instance, bat species in general and bird species when only feather spots remain (juvenile feathers can further complicate identification), and could alter the results of scavenger efficiency studies by increasing the amount of time carcasses remain on the ground prior to removal by wildlife agencies or animal control, or by making it necessary to mark the carcasses (e.g., with paint) so they're not double counted, which could impact the appeal of different carcasses to scavengers. While one company's animal handling policies raise questions about the accuracy of its mortality studies, this company and others with the same practices will still be eligible for enforcement assurances.
5. ABC is particularly concerned that these Guidelines will in practice authorize take for Bald and Golden Eagles. Page 13 states: "If taking of eagles is not anticipated, adherence to the Guidelines would give rise to assurances regarding enforcement discretion if an unexpected taking occurs." This new authorization of take has not gone through a NEPA review – the 10 day public comment period for this draft hardly qualifies. In addition, this would seem to offer enforcement discretion assurances to projects similar to the Pine Tree wind project in California, which was predicted to have low risk of raptor take and then had higher than expected take.

6. ABC supports the retention of adaptive management 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 cut-in speeds 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.

In addition, developers can prevent the need for adaptive management through project siting that avoids critical wildlife areas. Furthermore, if pre-construction 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 pre-construction studies.

7. ABC strongly supports FWS in retaining mentions of Avian and Bat Protection Plans (ABPP) and in not considering research as adequate compensatory mitigation for lethal take.
8. ABC agrees with FWS that post-construction habitat effects should be studied for species of concern that are losing habitat, not just species of habitat fragmentation concern. For example, the Chokecherry/Sierra Madre wind project in Wyoming involves 1,000 turbines spread over a 154-square mile area. If that project is built, the effects on habitat should be studied not just for Greater Sage-Grouse, a species of habitat fragmentation concern, but also Golden Eagle, a species of conservation concern.
9. ABC appreciates that FWS has added some of its original recommendations back into the best management practices section, and hopes that those recommendations will be retained hereafter. ABC understands the landowner preference and foundation removal cost issues that were raised during the discussion of the roads and decommissioning best management practices at the September 2011 FAC meeting. However, those concerns came from a private agricultural land perspective and the best management practices will apply to more than just that one circumstance. Therefore, it may be necessary to distinguish between private and public land uses or between agricultural and conservation land uses. For instance, on private land, it will be an individual landowner's decision whether to close and revegetate construction roads once they are no longer needed. But on public land that is being returned to conservation purposes, those roads should be closed and revegetated. Likewise, on lands being restored to agricultural use, removing turbine foundations down to a depth of three feet may be all that is needed in order to grow crops. However, if the land is being restored to conservation use, three feet is not sufficient for the root systems of some native plants such as prairie grasses and some desert plant species.

10. ABC appreciates the addition of consideration of crepuscular bird species to diurnal and nocturnal in study design.

ABC believes that bird-friendly wind power is achievable. Taking the necessary steps now to ensure that birds and the environment are protected is our best opportunity for achieving this.

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

Sincerely yours,

A handwritten signature in cursive script that reads "Kelly Fuller".

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