



Shaping the future for birds

Tom Melius
Regional Director, Midwest Region
U.S. Fish and Wildlife Service
5600 American Blvd. West, Suite 990
Bloomington, MN 55437-1458

August 4, 2014

Subject: Heritage Sustainable Energy Garden Peninsula Wind Energy project, Michigan

Dear Regional Director Melius:

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.

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 other protected species, such as Bald and Golden Eagles. ABC also considers the FWS a valued partner in bird conservation and realizes that the Service does a great deal of good work to protect wildlife and their habitats. Although we have had legitimate differences of opinion on wind power development and its potential impact on our nation's native birds (and bats), there are many areas where we collaborate effectively on species and habitat conservation initiatives.

ABC supports Bird Smart Wind Energy, which is described in some detail on our web site (http://www.abcbirds.org/abcprograms/policy/collisions/wind_developments.html). In the case of wind energy, careful siting and mitigation is crucial in preventing the unintended impacts to America's native bird and bat species. This risk to birds (and bats), including eagles, can be substantial, depending on the circumstances (<http://onlinelibrary.wiley.com/doi/10.1002/wsb.260/abstract>; <http://www.sciencedirect.com/science/article/pii/S0006320713003522>).

ABC wishes to comment on Heritage Sustainable Energy's (HSE's) Garden Peninsula Wind Energy Project in Michigan. It is our understanding that the initial project was to consist of 70 turbines, and 14 485-foot tall turbines near Lake Michigan were built in 2012 against the express recommendations of the FWS. Now HSE apparently wants to expand the size of the development with turbines of the same size in at least two additional nearby locations, threatening a major migratory bottleneck for Neotropical breeding birds and raptors, including federally-protected Bald Eagles. It is also our understanding that two endangered species of birds, the Piping Plover and Kirtland's Warbler, as well as the eastern red bat, inhabit this area, triggering serious Endangered Species Act (ESA) concerns. It is also our understanding that no



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Environmental Assessment (EA) or Environmental Impact Statement (EIS) had been conducted for this project to assess risks pre-construction, and that no incidental take permits under the ESA or BGEPA have been applied for to date, even though the facility is operational. Furthermore, no efforts have been made by FWS to collect data on the movements of nocturnal migrating birds over the site, nor has such data been provided by HSE.

We understand that the FWS has appropriately encouraged HSE to apply for an incidental take permit under BGEPA. However, we also want to know if FWS has asked HSE to apply for incidental take permits under the ESA and to engage in section 7 consultation? We also would like to know if the FWS plans regular spot inspections of the property to ascertain whether federally-protected birds or bats are being taken illegally, and, if so, how often this will occur?

ABC understands that under FWS' current voluntary permitting guidelines for wind energy development that HSE is not required to apply for incidental take permits under the BGEPA or ESA *a priori* because the project sits on private property. However, this still does not allow HSE to break the law and kill federally-protected wildlife with impunity. Regrettably, under the current non-regulatory guidelines, the only way that FWS will find out whether federally-protected species are killed is if HSE voluntarily reports the deaths, something that is unlikely to occur when the company is faced with the threat of a large fine, obligatory and expensive mitigation or compensation. ABC finds this highly problematic. This is precisely why ABC has argued for mandatory, rather than voluntary permitting guidelines for wind energy development and recently, along with 75 other organizations, asked DOI Secretary Sally Jewell to undertake a National Programmatic Wind Energy Environmental Impact Statement (EIS) to identify areas where wind energy should not be developed due to unacceptable threats to our native birds and bats and their habitats. To date, no reply has been received to this letter dated April 21, 2014.

Unfortunately, this may be another glaring example of the failure of the current voluntary guidelines to protect our public trust resources. The poor siting of this project, along with the failure of HSE to develop appropriate conservation plans and obtain permits, is an egregious violation of the voluntary guidelines, and the prospect of HSE greatly expanding this project is even more egregious. This should, in turn, trigger intensive monitoring efforts by FWS to ensure that federally-protected species are not being impacted. Furthermore, if any federally



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-protected species are killed in the absence of incidental take permits, then HSE should receive the maximum penalties under the law, including the threat of a complete and permanent shutdown.

Sincerely,

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

Cc: Dan Ashe