



Shaping the future for birds

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To: Desk Officer, Department of the Interior

Service Information Clearance Officer, U.S. Fish and Wildlife Service

From: Michael Hutchins, Ph.D., National Coordinator, Bird-Smart Wind Energy Campaign, American Bird Conservancy

Subject: Information Collection request Sent to the Office of Management and Budget, Land-based Wind Energy Guidelines, Supplementary Information, 1018-0148

Please accept these additional comments from the American Bird Conservancy (ABC) regarding the collection of pre-construction risk assessment and post-construction bird and bat fatality data at proposed and operational wind energy facilities in the United States, respectively. We have read the Supplementary Information provided in the Federal Register, which summarizes the public comments received. We note that many of the comments came from ABC and we therefore have the following thoughts on DOI's preliminary responses.

First, we would like to commend the Department of the Interior (DOI) and Fish and Wildlife Service (FWS) for recognizing that there may be serious problems with the current voluntary system, which is based largely on industry self-reporting. We were, in fact, happy to see the following statement: "We are currently in the process of evaluating the efficacy and use of the Guidelines, and the Service is considering regulatory options. Based on feedback from the wind energy industry, and from Service staff, the Guidelines are often successful in improving communication and lead to development of wind projects that are safer for wildlife, but in other cases are not successful in preventing wind energy facilities from being constructed in areas of high risk to wildlife." (p. 9). We question the statement "often successful", as there is no data presented to verify such a statement. Indeed, a recent Mississippi State University study funded by ABC and utilizing the USGS and FAA maps showing both existing and proposed turbines, indicates a failure of the voluntary guidelines in keeping turbines out of sensitive areas for federally-protected birds (http://www.abcbirds.org/abcprograms/policy/collisions/wind_siting.html). Tens of thousands of turbines already exist in sensitive areas for birds and tens of thousands more are planned.

We understand why the DOI and FWS would like to believe that all wind energy companies will work in good faith to protect our nation's public trust resources. It would certainly be more cost effective and easier for the FWS if they would. However, it is important that the DOI and FWS "trust but verify." ABC is seeing a wide range of problems with the current system, including: (1) industry-paid consultants that downplay the potential impact of wind energy facilities on federally-protected birds and bats during the EA development process (<http://www.windconcernsontario.ca/wind-farm-bird-expert-testimony-flayed-at-hearing/>, <http://www.mykawartha.com/news-story/5204832-lawyer-at-wind->



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[turbine-hearing-ruffles-bird-expert-s-feathers/](#)); (2) attempts to site wind energy in highly sensitive areas for birds (e.g., Mill Creek in Missouri, Camp Perry in OH, Apple Blossom in MI, etc.); industry-paid consultants who collect data on post-construction fatalities and report unverified and potentially incorrect data to regulators (without spot checks, how would we know?); (4) lack of fatality reporting by existing wind energy facilities; and (5) the hiding of bird and bat fatality data from the public (e.g., Pacifico:

http://www.oregonlive.com/business/index.ssf/2014/11/pacificorp_sues_to_block_relea.html).

ABC is troubled by the following statement: “While we agree that the public availability of data would facilitate greater oversight, improved consistency and comparability in study design and results, and improved landscape-level and cumulative effects analyses, we do not have the authority to require companies to share data that they own.” First, wind energy companies should not be collecting their own fatality data, as it is a direct conflict of interest. They only “own” the data because of the system that FWS has set up, which is based entirely on self-reporting. How would we know if some wind energy companies were failing to accurately report fatalities of federally-protected birds or bats or altering their reports to avoid expensive fines or mitigation?

<http://www.usnews.com/news/business/articles/2014/12/19/pacificorp-energy-pleads-guilty-in-bird-deaths>).

Second, these are public trust resources being taken, so the public has a right to know. With Pacifico’s recent lawsuit against the FWS to hide bird and bat mortality data from the public, the media has begun to ask the following legitimate question: what are they trying to hide?

http://www.oregonlive.com/business/index.ssf/2014/11/pacificorp_sues_to_block_relea.html). We understand that the current plan is to have the American Wind and Wildlife Institute (AWWI) retain bird and bat mortality data. We also understand that AWWI, as a private entity, is signing confidentiality agreements with wind energy companies, and will not be subject to Freedom of Information Act (FOIA) requests. This seems like a less-than- veiled attempt to continue to keep the public and concerned NGOs in the dark. As an analogy, what if the IRS had a similar policy? Corporations keep their own financial data, and must make it available to regulators at tax time, or at other times when improprieties are suspected. They are kept honest through the constant fear of an audit and the many severe penalties that might ensue should they be found to be “cooking their books.” There is no such system of surprise spot-checking or auditing for wind energy companies, and this makes the system of self-reporting even more problematic. With the five-year permitting requirement potentially extended to 30-years, and replaced with 5-year “internal” reviews, this could further reduce regulatory and public oversight under the Bald and Golden Eagle Protection Act (BGEPA). Right now, there is little opportunity for public oversight, even though these are public trust resources being taken.

ABC would like to see the following system put into place, which could greatly increase the validity of pre-construction risk assessment and post-construction fatality studies, and reduce the risk of lawsuits:



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(1) studies are conducted by independent, qualified experts selected by the FWS or a trusted consulting company hired by FWS (<http://www.kcet.org/news/define/rewire/commentary/its-time-for-independent-monitoring-of-wildlife-kills-at-renewable-energy-sites.html>); (2) the costs are borne by wind energy companies (they already presumably foot those bills under the current voluntary system, but hire their own “experts”); (3) all reports go directly to the FWS, and not through the wind energy company, who would then have no opportunity to edit or alter the reports to their advantage; (4) reports are made available to the public to add an additional layer of scrutiny; (5) conducting EAs and obtaining incidental take permits under the ESA, BGEPA and ESA when protected species are present is mandatory, not voluntary for any wind energy development that presents a risk to federally-protected birds or bats; and (6) the FWS begins enforcing the MBTA, BGEPA and the ESA (<http://www.kcet.org/news/define/rewild/birds-1/expert-theres-a-problem-with-fish-and-wildlifes-enforcement-of-bird-law.html>).

Thank you for your consideration. ABC stands ready to assist the DOI and FWS in fulfilling our joint goal of protecting our nation’s ecologically-important birds and bats from poorly-sited wind energy development.