AMERICAN BIRD CONSERVANCY

Shaping the future for birds

Tom Melius
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October 30, 2014

Subject: Commercial Wind Energy Development in Huron County, Michigan

Dear Regional Director Melius:

ABC wishes to express its serious concerns about Heritage Sustainable Energy's, DTE Energy's, Exelon Corporation's and NextEra Energy's construction or intentions to construct up to 900 large commercial wind turbines in Huron County (there are 328 turbines there now), Michigan, threatening a major bottleneck for Neotropical migratory birds and raptors, including federally-protected Bald and Golden Eagles. It is also our understanding that many threatened and endangered species, such as the Piping Plover, Kirtland's Warbler, Henslow's Sparrow, Short-eared Owl and others, migrate through or inhabit this area (Appendix I prepared by Port Crescent Hawk Watch), triggering serious Endangered Species Act (ESA) concerns. We have reviewed the recent radar studies conducted by USFWS in this area (Appendix II), and must conclude that Huron County is not an appropriate area for wind energy development, given the potential and substantial risks it poses to federally-protected birds. If this is an example of "proper" siting of wind energy development, then we wonder what criteria are being used to make such decisions.

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 and solar 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 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 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).

Vast numbers of protected migratory birds also move through or breed in these areas. Although there is no current provision for an incidental take permit under the Migratory Bird Treaty Act (MBTA), we suggest that the FWS should consider this option as soon as possible, so that it can be used as an additional tool for proper siting and operation of future wind energy facilities.

ABC understands that under FWS' current voluntary permitting guidelines for wind energy development that wind energy companies are not required to apply for incidental take permits under the BGEPA or ESA *a priori* when the project sits on private property. However, this still does not allow developers 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 if federally-protected species are killed is if the developers voluntarily report the deaths, something that is unlikely to occur when the companies are faced with the threat of a large fine, obligatory and expensive mitigation or compensation. Given the potential and, in our opinion, unacceptable risks posed to federally-protected birds by these existing and proposed large-scale wind energy developments in Huron County, we believe that post-construction bird deaths should be monitored independently (by a third party) to ensure accuracy of reporting. Furthermore, if the projects are allowed to be built, and the developers individually or collectively exceed kill limits under their incidental take permits, then the developers should receive the maximum penalties under the law, including the threat of a complete and permanent shutdown.

How will the FWS assess and take into account the cumulative impact of nearly a thousand large, commercial turbines, including disturbance, on bird populations in the region, and particularly on federally-protected species? As you know, our ability to accurately predict cumulative impact is limited and based on experimental and largely untested modeling procedures. This introduces a great deal of uncertainty into decision-making, with our public trust resources lying in the balance.

ABC also wonders how the proposed developers will argue that they can mitigate the effects of such poorly-sited turbines? As you know, most forms of mitigation touted by the wind industry have not yet been tested for their efficacy. While ABC believes that appropriate siting is the best and most effective form of mitigation, there are currently several other mitigation methods—though largely untested--that the wind industry has inappropriately promoted as "effective" ways to reduce bird and bat mortality at existing facilities, including use of radar to detect birds, combined with temporary or seasonal shutdowns (e.g., during migration), lighting adjustments to reduce attraction, deterrents (e.g., audio deterrents for bats), habitat management (e.g., removal of standing water and vegetation under turbines), prey population management (e.g., for raptorial birds), and retrofitting of the associated transmission lines and towers to reduce the risk of collisions and electrocution. This, of course, can also include burying the lines, which is likely the most effective type of mitigation.

All of these mitigation techniques have potential--under the right circumstances--to reduce bird and bat kills at wind energy sites. However, as the U.S. Department of Energy (DOE) recently pointed out, before various methods can be promoted as "effective", they must be tested experimentally using scientifically valid methods. ABC also believes that mitigation methods should be systematically tested for their efficacy under a wide range of circumstances, including in different seasons, time of day, landscapes and weather conditions before their efficacy can be appropriately evaluated. For example, it is well known that weather conditions, such as cloud cover and strong wind, can significantly alter the migratory pathways of birds and also influence how often they come to the ground and at what height they fly. All of these factors can influence the risk of wind energy development to federally-protected birds and bats.

ABC strongly agrees with DOE's statement that: "More research, development, field testing, and validation of impact minimization will therefore be needed in order for the industry to grow while managing the impacts that increased wind energy development may cause to sensitive wildlife" (https://eere-exchange.energy.gov/ . ABC is aware that some of this research is being undertaken now by USGS scientists and others in academia and this work should be rapidly expanded and targeted to fill current gaps in our knowledge before it is too late. Thousands of turbines may be constructed in areas that pose grave dangers to federally-protected bird (and bat) populations, including eagles, before such analyses are completed.

Unfortunately, Huron County, MI is another example of the failure of the current voluntary guidelines to protect our native bird species. The poor siting of both existing and proposed projects should, at the very least, require that the voluntary guidelines be followed to the letter, which means consultation under Section 7 of the ESA, applications for incidental take permits under the ESA and Bald and Golden Eagle Protection Act, a 3 mile set back from any shoreline, and an Avian Protection Plan must be in place *before* the companies are allowed to go ahead with any construction. We also believe that the presence of endangered and threatened species calls for a more detailed Environmental Impact Statement (EIS) study to be conducted to assess the potential risks instead a cursory Environmental Assessment, and that these should be open for public review and comment.

ABC will be watching the situation very carefully. Thank you for your attention to these important matters.

Sincerely,

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National Coordinator, Bird Smart Wind Energy Campaign

Cc: D. Ashe, I. Dimitry, C. Higgins, R. Pumford, J. Baldwin, D. Peters, J. Soehnel, L. Dombroski, A, Chartier, C. Putnam, E. Schools, M. Legina